108 - 282

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 230.

CHARLES EDWARD LEWIS, PLAINTIFF IN ERROR,

VS.

THE CITY OF SHREVEPORT, IN THE PARISH OF CADDO,
IN THE STATE OF LOUISIANA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF LOUISIANA.

FILED JUNE 18, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 230.

CHARLES EDWARD LEWIS, PLAINTIFF IN ERROR,

VS.

THE CITY OF SHREVEPORT, IN THE PARISH OF CADDO, IN THE STATE OF LOUISIANA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	*a*	1
Petition	1	1
Exhibit A (copy of bond)	606	2
Power of attorney	607 '608	3, 4
Citation, process	610	5
Marshal's return	612	6
Answer of defendant	613	6
Supplemental petition	618	9
Admission or appearance, &c	801	11
Agreed statement of facts	802	12
Exhibit A attached to agreed statement of facts (act incorporating city of Shreveport)	807	13
Hearing and submission of cause	845	24
Opinion of the court	846	25
Judgment	858	31
Petition for writ of error and order	860	32
Bond for writ of error	862	32
Clerk's certificate	864	33
Writ of error	865	34
Citation	866	34
Assignment of errors	868	35
Stipulation as to printing record	869	35

a UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Louisiana.

CHARLES EDWARD LEWIS, PLAINTIFF,
vs.
THE CITY OF SHREVEPORT, IN THE PARISH of Caddo, in the State of Louisiana, defendant.

Be it remembered that on January 9th, A. D. 1878, came Charles Edward Lewis, the plaintiff in the above and foregoing entitled suit, by Alfred Ennis, his attorney in fact, and filed in the office of the clerk of said court his petition and Exhibit A, together with a written power of attorney from Charles Edward Lewis to Alfred Ennis, in words and figures following, to wit:

Petition.

b UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Louisiana.

To the judges of the circuit court of the United States for the district of Louisiana:

Charles Edward Lewis, a resident at number twenty-eight Hamilton Terrace, in the city of London, county of Middlesex, and Kingdom of Great Britain, and a subject of the Kingdom of Great Britain, plaintiff, complains of the City of Shreveport, in the Parish of Caddo, in the State of Louisiana, a public municipal corporation, organized and existing under and by virtue of the laws of the State of Louisiana, and a citizen of the State of Louisiana, defendant, and says:

1 1. That heretofore, to wit, on the first day of July, A. D. 1872, the said defendant, in pursuance of the then existing laws of the State of Louisiana, and in pursuance of an ordinance of the said defendant, adopted on the 26th day of June, A. D. 1872, and ratified by the vote of the legal voters of the said defendant, at an election duly held therein on the first day of July, A. D. 1872, made, issued, and delivered its certain negotiable bond, whereby it promised to pay, on the first day of July, A. D. 1912, to the bearer, one thousand dollars, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July of each year, with interest coupons attached therefore The principal of said bond was made payable at the office of the administrator of finance in the said defendant, and the interest thereon was made payable at the Bank of New York, in the city, county, and State of New York. That said bond, in order to distinguish it from others of a like character, was marked No. 26. A copy of which said bond is filed herewith, made part hereof, and marked "Exhibit A."

That afterwards, to wit, on the said first day of July, A. D. 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of such tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in words and figures following, to wit:

Forty] *The City of Shreveport municipal loan.* [Dollars.

The City of Shreveport will pay the bearer forty dollars, in New York, on the first Jan'y, 1875.

MOSES H. CROWELL, *Mayor.*

$40.00.] [$40.00.

That after the payment of the said first, second, third, and fourth interest coupons, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable the same was presented for payment at the place where the same is made payable, and the payment thereof demanded and refused.

That the said fifth interest coupon, with interest thereon at the rate of five per cent. per annum since the first day of January, A. D. 1875, remains due and wholly unpaid.

(Omit from here to page 605 inclusive, in printing record. See stipulation, page 869.)

606 That the said plaintiff prays judgment against the said defendant for twenty-four thousand two hundred dollars, the principal ot the several interest coupons herein set out, with interest on two thousand six hundred dollars thereof, at the rate of five per cent. per annum since the first day of January, A. D. 1875; with interest on three thousand six hundred dollars thereof at the rate of five per cent. per annum since the first day of July, A. D. 1875; with interest on three thousand six hundred dollars thereof at the rate of five per cent. per annum since the first day of January, A. D. 1876; with interest on three thousand six hundred dollars thereof at the rate of five per cent. per annum since the first day of July, 1876; with interest on three thousand six hundred dollars thereof at the rate of five per cent. per annum since the first day of January, A. D. 1877; with interest on three thousand six hundred dollars thereof at the rate of five per cent. per annum since the first day of July, A. D. 1877; and with interest on three thousand six hundred dollars thereof at the rate of five per cent. per annum since the first day of January, A. D. 1878, together with all other proper relief.

That the said plaintiff further prays that the said defendant, the said City of Shreveport, in the Parish of Caddo, and State of Louisiana, be duly cited to appear before your honors in this honorable court on a day and at a place to be named, then and there to answer all and singular the premises, as well as the plaintiff's demand herein set forth, and to stand to, abide by, and perform such order as may be made, and such judgment as may be rendered against it by this honorable court.

(Signed) CHARLES EDWARD LEWIS,
By ALFRED ENNIS, *Attorney in fact.*

EXHIBIT A.

$1,000.] No. . [$1,000.

THE STATE OF LOUISIANA, CITY OF SHREVEPORT.

[Vignette.]

Issued in aid of the Texas and Pacific Railroad Company.

Know all men by these presents that the mayor and administrators of the City of Shreveport promise to pay to , or bearer, one thousand dollars, lawful money of the United States, which the said mayor and administrators promise to pay at the office of the administrator of finance, in the city of Shreveport, on the 1st day of July, A. D. 1912, with interest thereon at the rate of eight per cent. per annum, payable semi-annually at the Bank of New York, in the city of New York, on the presentation of the coupons hereto attached. For the performance of this obligation the faith and property of the corporation of the City of Shreveport are irrevocably pledged, and a tax is levied upon all the taxable property of said city annually to pay the said interest and to create a sinking fund to pay the principal when the same becomes due.

This bond is issued in obedience to an ordinance of the mayor and administrators of said city, adopted on the 26th day of June, 1872, in aid of the Texas and Pacific Railroad Company, and ratified by the vote of people of said city on the 1st July, A. D. 1872.

[SEAL.] In witness whereof this bond is signed by the mayor and administrators of the said city of Shreveport, and the seal of the city affixed this 1st day of July, A. D. 1872.

MOSES H. CROWELL, *Mayor.*
MARTIN TULLY,
Administrator of Finance.
J. N. HOWELL,
Administrator of Public Accounts.
F. T. HATCH,
Administrator of Improvements.
MOSES STERRETT,
Administrator of Assessments.

[$1,000.]

607 **[John Venn & Sons, public notaries and translators, 2 Pope's Head alley, Cornhill.]**

[Inland revenue, one shilling. W. W. V., N. P. Dec. 7, '77.]

I, William Webb Venn, of the city of London, notary public, by royal authority duly admitted and sworn, undersigned, do hereby certify and attest unto all whom these presents may concern, that the power of attorney hereunto annexed under my official seal has been signed, sealed, and delivered in due form of law in presence of me, notary, and the subscribing witnesses thereto by Charles Edward Lewis, the constituent herein named and described, unto me, notary, well known. And that the signature, "Charles E. Lewis," set and subscribed opposite to the seal at foot of such power of attorney is the true signature, and of the proper handwriting of the said party. And that the signatures, "Wm. Wray" and "And'w Russell," set and subscribed to the attestation at foot of such power of attorney, as witnesses to the due execution thereof by the said party, are the true signatures, and of the proper handwritings of William Wray and Andrew Russell, clerks to Messrs. Lewis, Munnus & Longden, solicitors, 8 Old Jewry, in the city of London. And that full faith and credit may and ought to be given to the said signatures in courts of judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed my said official seal, to serve and avail where needful. London, this seventh day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

In fidem.

[NOTARIAL SEAL.] (Signed) WILLIAM W. VENN,
Notary Public.

[Vignette of an American eagle.]

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA FOR GREAT BRITAIN & IRELAND, AT LONDON.

608 I, Joshua Nunn, vice and deputy consul-general and notary public ex-officio of the United States of America, at London, England, do hereby make known and certify to all whom it may concern that William Webb Venn, who hath signed the annexed certificate, is a notary public duly admitted and sworn, and practising in the city of London aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at London aforesaid, this eighth day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL OF U. S. CONSULATE-GENERAL.] (Signed) J. NUNN.

KINGDOM OF GREAT BRITAIN,
County of Middlesex, ss:

Know all men by these presents that I, Charles E. Lewis, residing at number twenty-eight Hamilton Terrace, in the city of London, county of Middlesex, and Kingdom of Great Britain, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Alfred Ennis, esq., of the city of Topeka, in the county of Shawnee, State of Kansas, and United States of America, my true and lawful attorney in fact for me, and in my name, place, and stead, and for my use and benefit, and to prosecute the same to final effect, any and all actions, suits or other proceedings which in his judgment may be necessary to be commenced and

prosecuted, to enforce the payment or collection of the matured
609 and maturing interest coupons belonging to ninety certain bonds, issued on the first day of July, A. D. 1872, by the City of Shreveport, in the Parish of Caddo, and State of Louisiana, payable to the bearer, on the first day of July, A. D. 1912, for one thousand dollars each, which said bonds are numbered from one to eighty-nine, inclusive, and two hundred and sixty; giving unto my said attorney full power and authority to do everything whatsoever requisite and necessary to be done in the premises, as fully as I could if personally present, with full power of substitution and revocation to him, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand this 7th day of December, 1877.

(Signed) CHARLES E. LEWIS. [SEAL.]

Signed, sealed, and delivered by Charles Edward Lewis, the abovenamed constituent, in the presence of

(Signed) WM. WRAY.
(Signed) AND'W RUSSELL,
Clerks to Messrs. Lewis, Munns & Longden,
Solicitors, 8 Old Jewry, in the City of London.

(Endorsed:) No. 8343. Charles Edward Lewis, plaintiff, vs. The City of Shreveport, in the Parish of Caddo, in the State of Louisiana, defendant. Petition. Filed January 9, 1878.

610 *Citation.—Issued January 9th*, 1878.

The President of the United States of America, to the marshal of the district of *of* Louisiana, greeting:

CHARLES EDWARD LEWIS
vs.
THE CITY OF SHREVEPORT, IN THE PARISH OF Caddo, in the State of Louisiana.
} No. 8343.

You are hereby commanded to summon The City of Shreveport, in the Parish of Caddo, in the State of Louisiana, a public municipal corporation, organized and existing under the laws of the State of Louisiana, and a citizen of the State of Louisiana, to comply with the demand of Charles Edward Lewis, a subject of the Kingdom of Great Britain, contained in the petition of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will
611 be rendered against it by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of February, 1878.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 9th day of January, A. D. one thousand eight hundred and seventyeight, and of the Independence of the United States of America the 102d year.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

612 *U. S. marshal's return.*

Received January 10th, 1878, by the U. S. marshal, and served a true copy of the within citation on the City of Shreveport, Louisiana, by handing the same to N. W. Murphy, mayor of said city, in person, on the 15th day of January, A. D. 1878, in the city of Shreveport, a distance of seven hundred and five miles from the city of New Orleans, Louisiana.

(Signed) CHARLES A. DEWING,
D'y U. S. Marshal.

613 *Answer.*

And be it further remembered that afterwards, to wit, on the May 25th, 1878, came The City of Shreveport, in the parish of Caddo, in the State of Louisiana, defendant in said suit, by A. H. Leonard, its counsel therein, and filed in the office of the clerk of said court its answer in words and figures following, to wit:

U. S. circuit court, district of Louisiana.

CHARLES EDWARD LEWIS
vs. No. 8343.
THE CITY OF SHREVEPORT.

The City of Shreveport for answer to plaintiff's petition denies all and singular the allegations thereof, except as herein admitted.

Respondents aver that the coupons sued on were and are coupons attached to bonds as set forth in petition; that said bonds and coupons, if issued and executed at all, were executed and issued without any authority of law, and therefore constitute no legal or valid obligation against The City of Shreveport.

Respondents aver that the charter granted to The City of Shreveport by the general assembly of Louisiana, and the laws of the State governing municipal corporations generally, as well as those relating specially to said city give no right, power, or authority to the municipal government of Shreveport to execute or issue the bonds and coupons sued on.

And respondents allege that if the persons holding office as the municipal authorities of Shreveport did execute and issue bonds and coupons sued on, their action in so doing was ultra vires, absolutely without legal force or effect, and that said bonds and coupons are not therefore binding obligations of said city.

Respondents deny that the execution and issuance of said bonds was in pursuance of any ordinance passed by the municipal government of Shreveport and ratified by the vote of the voters of said city, on the 1st July, 1872, or at any other time. They allege further that the charter of said city provides as follows: "No ordinance levying a tax, making an
614 appropriation over five hundred dollars, or providing for the pur-

chase or sale of real estate shall be passed, except by a majority of the council, nor shall a final vote on same be taken, except at a regular meeting, subsequent to a previous regular meeting at which the same shall have been introduced and passed to its second reading."

Now, respondents aver that the pretended ordinance under which it is claimed bonds and coupons sued on were executed and issued, purports to be an ordinance making an appropriation and providing for the purchase and alienation of real estate. That said ordinance was not introduced, read, or considered at any regular meeting of the council of Shreveport, was never legally passed, and is therefore and always was absolutely without effect.

Respondents aver further that by the charter of the city and the laws of Louisiana, the municipal authorities are and were prohibited from issuing any bonds or creating any debt without providing adequately for the payment of same, which was not done with regard to bonds and coupons sued on, and those bonds and coupons therefore cannot be valid obligations of the city.

Respondents allege that there is nothing in the charter of Shreveport or in the laws of Louisiana authorizing the municipal authorities of Shreveport to submit the pretended ordinance to the legal voters of the city for ratification, that any attempted ratification of any such ordinance could have no legal effect, and that the voters of Shreveport could not possibly ratify so as to give effect to any pretended ordinance not legally passed or passed in contravention of prohibiting laws or such as the council had no right, power, or authority to enact.

Respondents deny that any ratification was ever made as is alleged in pl'ff's petition or that bonds and coupons sued on were issued in accordance with any ratification of any ordinance.

Respondents, further answering, allege that on or about the 25th June, 1872, the individuals composing then the city council of Shreveport, at the urgent instance and request of the Texas Pacific Railroad Company, an incorporation foreign to the State of Louisiana, and having therein no chartered rights or existence, were induced to consider the propriety
615 of purchasing and donating to said company certain real estate in
Shreveport described as follows, "All the property lying between Commerce street and the river, commencing at the line of Cotton street and extending down the river to what is known as the Silver Lake tract."

That said individuals, deluded by the promises and representations, concluded to purchase said property for the city and then donate same to said company, all of which the council had no right or authority to do, but persisting in attempting to carry out their improper and unlawful purpose, said individuals, without authority and in violation of law, assumed to pass, but only to its second reading and not finally, on the 26th June, 1872, a pretended ordinance, and further assuming to act under authority thereof, executed and issued bonds and coupons sued on with others of like nature, entered into contract by which they assumed to purchase property hereinbefore described, from Gregg & Ford, C. C. Edy, S. B. Steers, Redwood & Johnson and Steers & Carlton, who pretended to be owners of said property, and thereupon donated same to said railway company.

Now, respondents allege said property was then and is now extra commercium and could not be the consideration of any valid or legal contract, because it lies immediately along and constitutes the west bank of Red River, a navigable stream, is public property, free to the use of the public and is not therefore susceptible of private ownership or of being the object or consideration of any contract.

Respondents aver that said individuals, still illegally assuming to act as the city council, caused to be executed and signed two hundred and sixty forty-year bonds, each for sum of one thousand dollars, with coupons attached, purporting to be bonds of said city, and delivered same to George Williamson, instructing him to negotiate same, to borrow money thereon, to execute and sign note of city therefor, and to pledge said bonds as security, all of which they had no right, power, or authority to do.

That said Williamson, on or about the 13th Aug't, 1872, executed his note with Thomas A. Scott, president of said railway company, as security for sum of $67,015.00, negotiated same through B. K. Jamison & 616 Co., of Philadelphia, and delivered said 260 bonds to said Jamison & Co., all of which said Williamson had no right, power, or authority to do. Respondents allege that a large amount, viz, the sum of sixty thousand dollars has been paid on said notes, and that all of said bonds nevertheless are yet held against the city.

Respondents further aver that plaintiff acquired said bonds through B. K. Jamison & Co., who had no right to transfer or dispose of same. They allege further that all the facts hereinbefore set forth were and are public, apparent on inspection of the charter of Shreveport and the laws of Louisiana and the records of said city, and plaintiff must be held affected with knowledge thereof. That the City of Shreveport possesses jura menorum; that the bonds and coupons sued on are not negotiable commercial paper, and no one can be considered a bona fide or innocent third holder thereof, and that any one acquiring said bonds or obligations acquired with notice and at his peril. Respondents aver that no one had authority to negotiate or transfer said bonds.

Wherefore respondents pray that pl'ff's demand be rejected; that this suit be dismissed at plaintiff's costs, and for all general and special relief.

A. H. LEONARD,
Of Counsel for Defend'ts.

U. S. circuit court.

C. E. LEWIS
vs. } No. 8343.
CITY OF SHREVEPORT.

A. H. Leonard, attorney for City of Shreveport, deposes and says that the allegations set forth and statements made in answer, filed on 25th May, 1878, in suit 8343, C. E. Lewis vs. City of Shreveport, hereto annexed, are true and can be established by competent and sufficient evidence.

A. H. LEONARD.

Sworn to & subscribed before me this 25th May, A. D. 1878.

J. A. CHARBONNET,
D'y Cl'k.

617 (Endorsed:) No. 8343. U. S. circuit court. Chas. E. Lewis vs. City of Shreveport.

And be it further remembered that afterwards, to wit, on January 13th, 1879, came Charles Edward Lewis, the plaintiff in said suit, by Alfred Ennis, his attorney in fact, and by Alfred Ennis and Lacey & Butler, his counsel therein, filed in the offite of the clerk of said court his supplemental petition and Exhibit A therein, in words and figures following, to wit:

618 UNITED STATES OF AMERICA.

In the circuit court of the United States in and for the district of Louisiana.

To the judges of the circuit court of the United States for the district of Louisiana:

Charles Edward Lewis, a resident at number twenty-eight Hamilton Terrace, in the city of London, county of Middlesex, and Kingdom of Great Britain, and a subject of the Kingdom of Great Britain, plaintiff, complains of the City of Shreveport, in the Parish of Caddo, in the State of Louisiana, a public municipal corporation, organized and existing under and by virtue of the laws of the State of Louisiana, and a citizen of the State of Louisiana, defendant, and by way of a supplemental petition herein, says:

619 That heretofore, to wit, on the first day of July, A. D. 1872, the said defendant, in pursuance of the then existing laws of the State of Louisiana, and in pursuance of an ordinance of the said defendant, adopted on the 26th day of June, A. D. 1872, and ratified by the vote of the legal voters of the said defendant, at an election duly held therein on the first day of July, A. D. 1872, made, issued, and delivered its certain negotiable bond, whereby it promised to pay, on the first day of July, A. D. 1912, to the bearer, one thousand dollars, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July of each year, with interest coupons attached therefor. The principal of said bond was made payable at the office of the administration of finance in the said defendant, and the interest thereon was made payable at the Bank of New York, in the city, county, and State of New York. That said bond, in order to distinguish it from others of a like character, was marked No. 1. A copy of which said bond is filed herewith, made part hereof, and marked "Exhibit A."

That afterwards, to wit, on the said first day of July, A. D. 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of such tax.

That attached to said bond, among others, was a certain interest coupon, being the twelfth interest coupon, which is in words and figures following, to wit:

Forty] *The City of Shreveport Municipal Loan.* [Dollars.

The city of Shreveport will pay the bearer forty dollars in New York, on the first July, 1878.

MOSES H. CROWELL, *Mayor.*

$40.00.] [$40.00.

That after the payment of the said first, second, third, and fourth interest-coupons, and before the maturity of the said twelfth interest coupon, the said bond with the said twelfth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said twelfth interest coupon became due and payable the same was presented for payment at the place where the same is made payable, and the payment thereof demanded and refused.

That the said twelfth interest coupon, with interest thereon at the rate of five per cent. per annum since the first day of July, A. D. 1878, remains due and wholly unpaid.

(Omit from here to page 798 inclusive, in printing record. See stipulation, page 869.)

799 That the said plaintiff prays judgment against the said defendant for thirty-one thousand four hundred dollars, the principal of the several interest coupons herein set out, with interest on two thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of January, A. D. 1875; with interest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of July, A. D. 1875; with interest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of January, A. D. 1876; with intrest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of July, A. D. 1876; with interest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of January, A. D. 1877; with interest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of July, A. D. 1877; with interest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of January, A. D. 1878; with interest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of July, A. D. 1878; and with interest on three thousand six hundred dollars thereof, at the rate of five per cent. per annum, since the first day of January, A. D. 1879, together with all other proper relief.

That the said plaintiff further prays that the said defendant, the said City of Shreveport, in the Parish of Caddo, and State of Louisiana, be duly cited to appear before your honors, in this honorable court, on a day and at a place to be named, then and there to answer all and singular the premises, as well as the plaintiff's demand herein set forth, and to stand to, abide by, and perform such order as may be made, and such judgment as may be rendered against it by this honorable court.

(Signed) CHARLES EDWARD LEWIS,
By ALFRED ENNIS, *Attorney in Fact.*
And by ALFRED ENNIS, and
LACEY & BUTLER, *Attorneys.*

800 EXHIBIT A.

$1,000.] No. [$1,000.

THE STATE OF LOUISIANA, CITY OF SHREVEPORT.

[Vignette.]

Issued in aid of the Texas and Pacific Railroad Company.

Know all men by these presents, that the mayor and administrators of the city of Shreveport promise to pay to , or bearer, one thousand dollars, lawful money of the United States, which the said mayor and administrators promise to pay at the office of the administrator of finance, in the city of Shreveport, on the 1st day of July, A. D. 1912, with interest thereon at the rate of eight per cent. per annum, payable semi-annually at the Bank of New York, in the city of New York, on the presentation of the coupons hereto attached. For the performance of this obligation, the faith and property of the corporation of the city of Shreveport are irrevocably pledged, and a tax is levied upon all the taxable property of said city annually, to pay the said interest and to create a sinking fund to pay the principal when the same becomes due.

This bond is issued in obedience to an ordinance of the mayor and administrators of said city, adopted on the 26th day of June, 1872, in aid of the Texas and Pacific Railroad Company, and ratified by the vote of people of said city on the 1st July, A. D. 1872.

[SEAL.] In witness whereof, this bond is signed by the mayor and administrators of the said city of Shreveport, and the seal of the
801 city affixed this 1st day of July, A. D. 1872.

MOSES H. CROWELL,
Mayor.
MARTIN TULLY,
Administrator of Finance.
J. N. HOWELL,
Administrator of Public Accounts.
F. T. HATCH,
Administrator of Improvements.
MOSES STERRETT,
Administrator of Assessments.

[$1,000.]

(Endorsed:) No. 8343. Charles Edward Lewis, plaintiff, vs. The City of Shreveport, in the parish of Caddo, in the State of Louisiana, defendant. Supplemental petition filed January 13, 1879.

Admission or appearance, &c., annexed to the foregoing answer.

U. S. circuit court, district of Louisiana.

CHAS. EDWARD LEWIS
vs. No. 8343.
CITY OF SHREVEPORT.

It is hereby admitted that the supplemental petition & citation have been duly served upon the defendant; and it is agreed that the answer heretofore filed to the original petition shall be regarded and treated as an answer to the supplemental petition as well as the original; and that whatever defences are therein set forth shall apply to both demands, original & supplemental.

It is also understood and agreed that the admission heretofore entered into in reference to certain facts and testimony shall be considered applicable to the original and supplemental demand.

Dated New Orleans, Jan'y 9th, 1879.

(Signed)
A. H. LEONARD,
Att'y for Defendant.
LACEY & BUTLER,
Att'ys for Plaintiff.

802 *Statement of facts.—Filed February* 3, 1879.

Circuit court U. S., district of Louisiana.

CHARLES EDWARD LEWIS
vs.
CITY OF SHREVEPORT.
No. 8343.

The following is the agreed statement of facts in this cause:

1. It is admitted that the charter of Shreveport is to be found in Acts of Louisiana, session of 1871, page 218, which charter is annexed and made part hereof, marked "Exhibit A."

2. That on 26th of June, 1872, an ordinance was introduced and passed by the city council of Shreveport, authorizing purchase of real estate by the city to be donated to the Texas Pacific Railway Company, upon which depots and machine shops were to be permanently established and maintained by said company, and providing that for purchase of said property 260 forty-year $1,000.00 bonds should be issued and sold on market, said bonds bear-
ing interest at rate of 8 % per annum, payable semi-annually, with
803 coupons attached providing further that said ordinance should be
submitted to the vote of the people for their ratification and approval, and it is admitted that said ordinance was never considered by said council on any other day prior to said 26th June, 1872, and that it further provided for levying a tax to pay interest and create a sinking fund for redemption of bonds.

3. That, in pursuance of said ordinance, an election was held in said city on July 1st, 1872, and said ordinance was then and there ratified and approved by the voters, 705 votes being cast for said ordinance and 3 against it.

4. That in pursuance of said ordinance and said vote ratifying same the said city issued 260 bonds, each for $1,000, payable at 40 years, bearing interest at 8 %, payable semi-annually, with interest coupons attached, said bonds bearing date July 1st, 1872, a copy of which said bonds is attached to and made part of plaintiff's petition, a copy of coupons attached
to said bonds being set out in and made a part of pl'ff's petition.

804 5. That on July 13th, 1872, the said city by resolution, appointed
George Williamson its agent, to dispose of said bonds and negotiate sale thereof.

6. That on July 23d, 1872, said city appropriated by ordinance $500 to defray expenses of said agent, and also further appropriated money to pay for costs of engraving said bonds.

7. That on Oct. 31st, 1872, said city, by ordinance, appointed Geo. Williamson special agent to negotiate said bonds, and in default of negotiating them empowered him to execute the note of said city, and to sign thereto the name of mayor of said city, payable four months after date, for one hundred and thirty thousand dollars, and to hypothecate said bonds as security, and pledging faith of city to make good any arrangement made by said agent in negotiating or raising money on said bonds.

8th. That on Nov. 7th, 1872, said city, by ordinance, authorized said Wil-
liamson, agent, to turn over to Thomas A. Scott, 200 of said bonds
805 on his, Scott, assuming payment of the notes given by said city for
purchase of property donated to Texas & Pacific Railway Company.

9. That on 31st Oct., 1872, A. W. O. Hicks, city attorney of said city, gave his opinion as such att'y, that the city had power to issue said bonds, and that the public utility made the object for which the bonds were issued clearly within the corporate powers of the city council.

10. It is admitted that Williamson, agent as aforesaid, appointed B. K. Jamison & Co., as agents to negotiate said bonds, and that the city of Shreveport, by ordinance, ratified his, Williamson's, action.

11. It is admitted that on 1st March the administrator of finance of said city made an official statement of indebtedness of said city, in which was included said 260 bonds.

12. That on 27th March, 1873, Williamson, as special agent, wrote to B. K. Jamison & Co. that ample provision had been made by ordinance
to pay principal and interest of said 260 bonds.

806 13. That on Dec'r 17, 1872, the city council, by ordinance, levied
a tax to pay principal and interest of said bonds.

14. That on June 13th, 1873, said city, by ordinance, pledged the city to pay the note negotiated by Williamson, agent, to secure which said bonds were hypothecated, and instructed adm'r of finance to hold sacred tax levied by ordinance December 17, 1872.

15. That on July 19, 1872, said city, by ordinance, authorized Williamson, agent, to sell said bonds for 60 cents on the dollar.

16. That on city budget, published Nov'r 27, 1875, was included 90 forty-year $1,000 bonds in hands of purchasers in England, etc.

17. That plaintiff acquired ninety of said bonds with coupons attached in open market, being bonds to which the interest coupons sued on belong, paying therefor 85 cents on the dollar, and that said plaintiff is bona fide holder of said bonds and of interest coupons sued on for value.

18. It is admitted that the Texas Pacific Railway Company has
807 not now and never had any charter from the State of Louisiana,
or any right arising from any statute of that State passed in favor
of said company, but that said company held a lease from Vicksburg, Shreveport & Texas R. R. Co., not yet expired, of the railroad from Shreveport to Texas line.

19. It is admitted that the ordinance of June 26th, 1872, is the only

ordinance of said city authorizing the issuance of said 260 forty-year bonds.
February 3d, 1879.

(Signed)

A. H. LEONARD,
ROUSE & GRANT,
WM. A. SEAY,
Counsel for City Shreveport,
LACEY & BUTLER.
ALFRED ENNIS,
Counsel for Plaintiff.

Exhibit A, referred to in the foregoing statement of facts.

An act to incorporate the city of Shreveport, define its limits, and
808 provide for its better police and municipal government.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That all of that district of country contained within the following limits, to wit: From where the half mile line running north through section thirty-five (35) would strike, if continued, Cross Bayou on the north or west bank; thence south on said line to the centre of section two (2); thence east to the half mile corner of section six (6), township seventeen (17), range thirteen (13) west; thence north to the northwest corner of said section six; thence east on the township line to the east bank of Bayou Pierre; thence along said bayou across Red River; thence up east bank of Red River to a point opposite the north bank of Cross Bayou; thence across Red River to the northwest bank of Cross Bayou; thence up the north bank of said bayou to point of starting, shall be included within the corporate limits of the city of Shreveport.

809 SECTION 2. Be it further enacted, etc., That the inhabitants of the city of Shreveport, laid out as above, are hereby constituted and declared to be a corporation and body politic in fact and law, by the name and style of "The City of Shreveport," and by the same name shall have perpetual succession; shall be capable of suing and being sued, and of prosecuting and defending in all courts all actions and matters whatsoever; may purchase, receive by donation, and hold property of all kinds, within and without the limits of the city; also, may have and use a common seal.

SECTION 3. Be it further enacted, etc., That the government of the city of Shreveport and the administration of its affairs shall be vested in a mayor and four administrators, to wit: One of finance, one of improvements, one of public accounts, *of* of assessments; and said mayor and administrators shall be elected or appointed, as hereinafter provided, and
shall form the council of the city of Shreveport. The governor
810 shall, by and with the advice and consent of the senate, appoint the
mayor and the four administrators, who shall hold their offices until the first Monday of November, 1872, or until their successors are elected and qualified. On the first Monday of November, 1872, there shall be an election for administrators of finance and assessments, and every two years thereafter, and on the first Monday of November, 1873, there shall be an election for mayor, the administrators of improvements and public accounts; and every two years thereafter said officers, when

elective, shall be elected at large by the qualified voters of the city of Shreveport, as constituted by this act. The mayor and administrators, before entering upon the duties of their offices, respectively, shall take and subscribe, before the court having probate jurisdiction in the parish of Caddo, or before the judge thereof in chambers, the oath prescribed by article 100 of the constitution of this State, and (that they) will faithfully perform the duties and discharge the obligations imposed upon them by this act; and, with the exception of the mayor, (they) shall moreover give bond, as hereinafter more particularly prescribed and directed. 811

SEC. 4. Be it further enacted, etc., That on the second Monday following the day of their appointment or election the council shall hold their first meeting at the usual place of such meeting until a city hall shall be erected, when the meeting shall be held there, at which the mayor and the administrators of departments elect, having presented and filed their certificates of election and qualification, as herein provided, shall enter upon the discharge of their duties, as specified in this act, and their predecessors shall turn over to them all books, papers, property, money, and accounts pertaining to their offices and to the city of Shreveport.

SEC. 5. Be it further enacted, etc., That should a vacancy occur at any time after the first day of January, 1872, in the office of mayor or administrator of a department by death, resignation, or otherwise, more than three months preceding the expiration of his term of office, the council shall, at their first meeting after the occurrence of said vacancy, 812 order an election for a successor to fill the same, of which notice shall be given in the official journal ten days prior to said election; provided that all vacancies occurring by death, resignation, or failure to qualify prior to the first day of January, 1873, shall be filled by appointment by the governor, as provided in section four of this act. In case of a vacancy in the office of mayor, or in case of his illness or temporary absence, the administrator of the department of finance shall act as mayor pro tempore until a successor is duly appointed or elected and qualified, or during said sickness or temporary absence. In case of a vacancy, or similar temporary disability occurring in the office of any administrator, the mayor shall designate another administrator to act in his stead ad interim. And all officers herein provided for shall hold their offices until their successors are duly elected and qualified.

SEC. 6. Be it further enacted, etc., That the mayor shall be the 813 chief executive officer of the city; he shall affix the seal of the corporation to all its official acts; he shall see that the laws and ordinances be properly and faithfully executed; he shall be ex officio justice and conservator of the peace; he shall have general supervision of all matters relating to the discipline and efficiency of the police, the protection of the public and the private property, the preservation of public order and peace, and the enforcement of the city ordinances relative thereto, the houses of refuge and correction, and lighting the city; he shall call extra meetings of the council whenever he shall deem the same necessary, or whenever three members of the same shall, in writing, stating the object thereof, request him to do so; he shall from time to time lay before the council a full statement of the affairs of the city. It shall be his duty to report to the council all officers and persons employed by the city who fail to perform their duty, or commit any act for which they should

814 be removed from office, and may in his discretion suspend any such
officer or employee until the action of said council, to whom he shall report said suspension at their first meeting thereafter; he shall preside at the meetings of the council, but shall have no vote therein, except when there is a tie, in which case he shall have the casting vote; he shall sign and publish all ordinances and resolutions shall thereupon have the force of law; he shall have general superintendence over the departments of administration, and shall lay before the council every month the monthly reports hereinafter required to be made to him by said departments. His term of office, when elected, shall be for two years. He shall receive a salary of twelve hundred dollars per annum, payable monthly on his own warrant, countersigned by the administrator of public accounts, and such a per centum of the fines assessed against offenders against the city ordinances as the council may direct. He shall be permitted to appoint a clerk at such a salary as the council may authorize, and he shall
815 exercise all the powers heretofore vested in the mayor of the city
of Shreveport under existing laws, not inconsistent or in conflict with this charter.

Sec. 7. Be it further enacted, etc., that in the administration of the government and affairs of the city, there shall be, in addition and subordinate to the executive powers of the mayor, four separate departments, the heads of which shall be known as the administrators of said departments, and shall have the administration and especial control of the same, subject to the limitations imposed by this act or other laws or the ordinances or resolutions of the council, to wit:

First. A department of finance, which shall have general superintendence of all matters relating to the finances of the city of Shreveport, and the receipt and disbursement of the same; he shall receive and collect all moneys, bills receivable, dues, and assets belonging to the corpora-
816 tion, and shall deposit the same daily in such bank as the council
shall elect as the fiscal agent of the corporation, as hereinafter provided, keeping a separate deposit account for each specific fund, on account of which deposit is made; shall keep correct accounts of all indebtedness of the city, and make all disbursements for account of the same by checks on said bank, but shall make no payment or disbursement unless the claim, bill, or account for the same shall have been audited by the administrator of the department of public accounts, and be authorized by ordinance or resolution of the council, and the warrant therefor shall be duly numbered, indorsed, and filed in said department; shall keep correct account of the resources, revenue, and disbursements of the corporation, which shall at all times be open to the inspection of the mayor and members of the council; shall regulate the collection of all taxes, licenses, and dues which may be imposed by the council; shall prescribe the mode and
817 form of keeping the corporation books and accounts in every de-
partment created by this act, and shall be vested with and perform such other functions and duties as may from time to time be prescribed by the council.

Second. A department of improvements, which shall have general superintendence of all matters relating to the streets, sidewalks, pavements, and wharves, and the construction, cleansing, and repairing the same; the construction and repairing of bridges and the drainage of the city; the superintendence of the water-works, school-houses, hospitals, asylums, markets, railroads, canals, weights and measures, the fire department and manufactures, and shall be vested with, and perform such other functions and duties as may from time be prescribed by the council.

Third. A department of public accounts, which shall have general superintendence of all claims and demands against the city of Shreveport, and of all
contracts entered into by the city; shall keep a record of all ordi-
818 nances making appropriations for general or special claims; shall is-
sue warrants on the department of finance for the payment of claims, the said warrants to be consecutively numbered, corresponding to the number of vouchers upon which they are issued; and shall specify the account or fund upon which they are drawn; shall, in the months of January and July, of each year, lay before the council a report of the claims and accounts against the city warranted for during the preceding six months, with a full detail of the names of the persons to whom issued, the amount thereof, the number of the warrant, and the number and date of the ordinance or resolution authorizing the same. The report shall also embrace a statement of the indebtedness of the city, showing in detail all outstanding obligations, their date, amount, to whom and for what issued, when due, and under what ordinances and resolutions authorized. It shall also contain estimates for
the receipts and expenditures for the current six months. No war-
819 rants shall be drawn by said department on the department of
finance, unless there are funds in this department to meet the same, and the administrator of this department shall be vested with and perform such other functions and duties as may be prescribed by the council, and heretofore vested in the controller of the city of Shreveport, under existing laws not in conflict or inconsistent with this act.

Fourth. A department of assessments, which shall have general superintendence of the assessment of all property in the city of Shreveport, real or personal, for taxation; of the impositions of licenses on professions, trades, and occupations necessary to produce revenue sufficient to carry on the city government, and pay outstanding debts and contingent expenses, and shall be vested with and perform such other functions as may be prescribed by the council.

SEC. 8. Be it further enacted, etc., That the administrators of the fore-
going departments shall, at the end of every month, render
820 to the mayor a written report of the administration of the depart-
ments during that month, their actual and their respective conditian. They shall each receive an annual salary of six hundred dollars, payable monthly upon their own warrants, approved by the mayor, and shall not be allowed any other compensation or fee whatever. They shall keep their offices open daily, Sundays and legal holidays excepted, for the transaction of business, during such hours as the council shall direct.

SEC. 9. Be it further enacted, etc., That the council shall organize the departments established by the foregoing section, regulate the number of clerks and officers to be employed by each department, and the amount of their salaries; said clerks and officers shall be recommended for appointment by the administrators of said departments respectively, and be appointed by the council; they may be suspended by said heads of departments respectively, at pleasure, and in case of such suspension it shall be re-

821 ported to the council at its first meeting thereafter, together with
the cause thereof. The council may remove, by a vote of the majority of the members, any of said clerks or officers for incompetency, neglect of duty, malfeasance in office, and when reported by the heads of the departments, when the services of such officer or employee be no longer necessary to the public interest.

SEC. 10. Be it further enacted, etc., That the council shall have full power and authority to make and pass such by-laws and ordinances as are necessary and proper:

First. To regulate and preserve the peace and good order of the city, and to provide for and maintain its cleanliness and sanitary condition, not inconsistent with any law relative thereto.

Second. To regulate and make improvements to the streets, public squares, wharves, and other public property, and to provide for the lighting and watering of the same, and to order and direct the ditching,
822 filling, opening, widening, and continuing of any streets, and, if
for such purpose the land of any private person or body corporate is necessary to be had, the said council shall have the right and power of purchasing the same at a reasonable price, or cause the same to be expropriated according to the manner and formalities prescribed by existing laws upon the subject; to regulate the proportion and to make and repair all common sewers, drains, canals, public roads, levees, dykes, causeways, and bridges, notwithstanding any superintendence which might be set up by any corporation or individual over such works; to determine the completion and dimensions of the pavements of the streets; to fix the squaring, and to prevent any encroachments upon or stopping and obstructing the streets, public squares, levees, public roads, or any part of the port of Shreveport, and to order any object, whatever may be its value, which may encumber the said places or prevent and embarrass the free use of the same, to be removed or sold for whom it may concern,
823 in the same manner and after such advertisements as shall be required by such regulations.

Third. For cleaning the banks of the river or other navigable streams within the limits of the city, for the reopening of such ancient natural drains as have been obstructed by the owners of the adjacent lands, or the filling up of any water course which is not navigable, for the purpose of carrying the public highways over the same, provided that no injury be occasioned thereby to the neighboring inhabitants.

Fourth. To prescribe and collect rates of levee dues and wharfage, and to designate the place for anchoring and mooring steamboats and other water-craft in the port of Shreveport, and to regulate and maintain the public peace on the same while in the limits of the city of Shreveport; every year lay an equal and uniform tax upon all real and personal property in said city, as prescribed and under the limitations imposed
824 in this act, for the ensuing year, which said taxes shall be due and
payable at the office of the department of finance from the first day of March to the twenty-first day of July, inclusive, and at its first regular meeting in December, and on the same day annually thereafter, to impose an annual license tax on trades, professions, and callings as herein prescribed, said license to expire on the thirty-first day of December, in the year in which it was obtained, and which license tax shall be due and

payable at the office of the finance department from the first day of January to the twenty-eight' day of February, inclusive.

Sec. 11. And be it further enacted, etc., That the council shall, once in
every twelve months, before fixing and deciding upon the amount of taxes
and licenses to be assessed for the ensuing year, cause to be made out a detailed
estimate, exhibiting the various items of liabilities and expenditures,
including the requisite amount of contingent expenses during
825 said year, and shall cause the same to be published for at least
ten days in the official journal of the city, and such rate of taxation
not exceeding one dollar and seventy-five cents ($1.75) on every hundred
dollars of valuation shall thereafter be fixed and assessed as, together with
other revenues of the city, may be necessary to meet said estimated liabilities
and expenditures. The adoption of said detailed estimate shall be
considered as the appropriation of the amount therein stated for the purposes
therein stated, and the administrator of public accounts shall not
audit, nor shall the administrator of finance draw or sign any check upon
the fiscal agent therefor, for any claims, unless an appropriation therefor
has been duly made in accordance with this act.

Sec. 12. Be it further enacted, etc., That the taxes assessed and levied
by virtue of this act on the property, real or personal, of any person or
corporation, are hereby declared to be a lien and privilege upon said property,
to date from the first day of August of the year for which
826 they may be assessed, any alienation thereof or incumbrance thereon
notwithstanding, and said lien or privilege shall exist in favor
of the city of Shreveport for the respective amount of taxes assessed until
the same shall be fully paid, and the same shall be paid in preference to all
mortgages and incumbrances other than taxes due the State, and if the license
tax, as herein provided, shall not have been paid by the person liable therefor
on or before the first day of March in each and every year, the city of
Shreveport, upon affidavit made by any officer thereof, that said tax, commonly
known as a license, has not been paid by the person liable therefor,
shall have a lien in the nature of a lessor's privilege upon the personal
property of the person so in default, and on application made a writ of
provisional seizure shall issue out of any court of competent jurisdiction
in favor of said city, and said property so seized provisionally shall be sold
in satisfaction of said tax.

827 Sec. 13. Be it further enacted, etc., That all tax licenses and dues
imposed by the city of Shreveport, or due to the same, and not paid
on the thirty-first day of July, shall be exigible, after thirty (30) days'
publication in the official journal, when the amount claimed is five hundred
dollars ($500) or less, in the parish court; when over five hundred
dollars ($500), in the district court; and the only process necessary for
judgment upon said claims, bill, or dues shall be said publication. Upon
the production and filing of said claims, bills, or dues in the appropriate
and competent court, and the production of proof of publication, judgment
shall be immediately rendered in favor of said city and against the delinquent
tax-payer or debtor. It shall be the duty of the administrator of
the department of finance to file said bills and proof in the appropriate
court immediately after said publication, and to superintend said
828 proceedings, under the advice of the city attorney, and collect the
proceeds of the judgment and writ in the hands of the clerk or

sheriff; that the clerks of said courts shall be allowed and permitted to charge one dollar, and no more, for all proceedings had, including judgment and execution, in each case filed. And the sheriff shall be allowed a sum, not exceeding one dollar, for all processes placed in his hands in each case, the same not to include the regular commissions for collecting the same or costs of keeping and advertising; and upon the prayer of the city, through its proper representative, any court of competent jurisdiction shall enjoin the said person or persons, so liable to pay a license tax, and who shall refuse or neglect to pay the same, from continuing to carry on such business or profession until he shall have paid the same, and all costs and charges for the recovery and enforcement of the claim therefor.

SEC. 14. Be it further enacted, etc., That all property, seized and
829 levied upon for non-payment of taxes, shall be sold without ap-
praisement, and for cash, or so much cash as will satisfy the tax, interest, and costs; provided, that for any amount over that the defendant may direct the sale to be made on credit, and all property sold under this act shall be liable to redemption by the owner, his heirs, legal representatives, or assigns, for and during two years from and after the day of sale, by paying in cash to the purchaser, or party holding under him, an amount being fifty per cent. over and above the amount of the tax and all costs incurred by the sale and the amount of all taxes paid since the sale.

SEC. 15. Be it further enacted, etc., That all contracts for public works, or for materials or supplies ordered by the council, when the same exceeds five hundred dollars ($500), shall be offered by the administrator of the department to which such contract pertains, at public auction, and given
to the lowest bidder who can furnish security satisfactory to the
830 council, or the same shall, at the discretion of the council, be ad-
vertised for proposals, to be delivered to the administrator of the department to which such contract pertains, in writing, sealed, and to be opened by said administrator in the presence of the mayor and administrator of finance, and given to the person making the lowest proposal therefor, who can furnish security satisfactory to the council; provided, that the council shall, in either case, have the right to reject all bids or proposals.

SEC. 16. Be it further enacted, etc., That whenever one-fourth of the owners of real property fronting upon any unbanquetted street in the city of Shreveport shall, by petition signed by the petitioner or petitioners, and addressed to the council of said city, ask for banquetting of said street or of any portion thereof, setting forth the character and quality of said banquet-
ting, said council shall cause said petition to be published in En-
831 glish in the official journal of said city for and during four weeks;
and if, at the expiration of said publication so made of such petition, a majority of the owners of real property fronting on said street or streets, or said portion thereof, shall not, by memorial signed by the memorialist or memorialists, and addressed to said council, object to the same, the said council shall, by its resolution or otherwise, order said banquetting to be made in accordance with lines and levels, to be furnished by the city surveyor, and the whole costs of said banquettes so made, as aforesaid, shall be borne by the owner or owners of real property fronting on said banquettes in equal proportions, according to the running foot frontage, and, in the event of the owner or owners of any portion of said

property so banquetted refusing or neglecting to pay the proportion so
due for more than sixty days, the same shall constitute a lien and privilege
upon said property until the said sum so due shall be paid ;
832 provided, the proper proof of the performance of the work is made
before a competent court, when the same shall be recorded in the
office of the recorder of mortgages.

SEC. 17. Be it further enacted, etc., That the city council may, whenever
it shall deem it to the public interest, by ordinance provide for the paving,
opening, or widening of any street or streets, or any part thereof, or in the
construction of a city hall, markets, and other structures of public necessity
and utility, the cost of which shall be paid by the city ; provided, that
whenever the amount or costs of paving said streets, or erecting the structures
aforesaid, from time to time, exceeds the amount of funds in the city
treasury, then the common council are hereby authorized and empowered
to issue bonds to the city, running forty years, with interest coupons attached,
and bearing interest at the rate of, and not exceeding ten per
centum, payable semi-annually, either at the cities of New Orleans,
833 Shreveport, or New York, at the option of the holder thereof, and
said council shall have power to dispose of said bonds in such manner
as they may deem for the best interest of the city, the proceeds of
which shall be used solely for the purpose for which they shall be issued.
They shall, also, by ordinance provide for levying a tax, from time to
time, in order to provide for the payment of the principal and interest of said
bonds ; provided, that whenever the city council of Shreveport desires to
use any particular patented pavements for the purpose of paving or improving
the streets, or any parts of the streets of said city, then the council
of said city are hereby authorized, by resolution or ordinance, to fix the
price to be paid for such pavement, and to let the same under contract to
the licensee or assigns of said patented pavement.

SEC. 18. Be it further enacted, etc., That all paved and unpaved streets
in the city of Shreveport shall be kept in repair by the city,
834 and all paved banquettes shall be kept in repair by the owners
of real property fronting thereon.

SEC. 19. Be it further enacted, etc., That no administrator of department
or other officer of the corporation, or person in the employ of the
corporation, shall be directly or indirectly interested in any work, business,
or contract which is paid or to be paid by the city, or by an assessment
levied by the council, nor in the purchase of any real estate belonging
to the corporation, or which shall be sold for taxes or assessments,
or be the surety of any person having a work, contract, or business
with said city, for the performance of which security may be required, nor
shall he be a surety on the official bond to be given by any other administrator
of department. Any administrator offending against the provisions
of this article shall be liable to both actual and exemplary damages,
recoverable upon his bond and against him and his sureties in solido,
and he and they shall also be so liable to both actual and exemplary
835 damages for any other malfeasance or corruption in office
of which he may, while in office, be guilty, and which may be
ascertained by the judgment of any court of competent civil jurisdiction
in a suit upon said bond against such administrator and his sureties in the
name and on behalf of the city of Shreveport.

SEC. 20. Be it futher enacted, etc., That the council shall hold a regular meeting on some stated day of every week. Their sessions shall be public; their proceedings shall be duly recorded, and shall be published in an official journal selected by them. Three members shall be requisite to constitute a quorum for doing business; no ordinance levying a tax, making an appropriation over five hundred dollars ($500), or providing for the purchase or sale of real estate, shall be passed, except by a majority of the council, nor shall a final vote on the same be taken, except at a regular meeting subsequent to a previous regular meeting, at
836 which the same shall have been introduced and passed to its second
reading, and the said ordinance, together with the vote on the same, and the names of the members voting yea or nay, shall be published in the official journal, except in case of invasion, insurrection, pestilence, or inundation.

Be it further enacted, etc., That no administrator of department shall be qualified to take his seat, or to exercise the functions of the office to which he shall have been elected or appointed until he shall have given bond in the sum of five thousand dollars, with solvent and sufficient sureties, resident in the State of Louisiana, for the faithful performance of his duties, the solvency and sufficiency of which bond and sureties shall be determined in the manner herein provided, to wit, that within thirty days after receiving his certificate of appointment or election, said member of council shall appear before a judge of any court of record in this State
837 with his bonds and sureties, and it shall be the duty of the judge
of said court to examine and question, under oath, the sureties so offered, and the said judge shall decide as to the sufficiency and solvency of the sureties, and approve or decline to approve the bond so tendered. These proceedings shall have preference over all other business before the court. They shall be public, and be entered upon the minutes of the court, and the clerk shall furnish a certified copy of the same, under the seal of the court, for which he shall be entitled to charge two dollars; a copy of said proceedings shall be recorded in the office of the recorder of mortgages of the parish where the bond is given, and the inscription shall operate as a judicial mortgage against all the property of the principal, for the amount for which he is bound, and in default of said member furnishing said bond, and the approval thereof by said court, and his undertaking, not-
838 withstanding, to perform any functions of said office, he shall be
considered guilty of a misdemeanor, punishable by fine not exceeding five thousand dollars, and all acts done by him under color of said office shall be absolutely null and void. Should any of the administrators appointed or elected fail to qualify as herein provided for, the mayor shall immediately order an election, in the manner as provided for in this act, to fill the vacancy or vacancies thus created, except in such cases as are herein provided to be filled by appointed.

Be it further enacted, etc., That at the first meeting of the council, or as soon thereafter as practicable, they shall elect, viva voce, one of the banks of the city as fiscal agent of the city of Shreveport, in which shall be deposited daily by the administrator of finance all moneys, bonds, and notes collected by him on account of the city, who shall open and keep special accounts, as the council may prescribe, and shall pay
839 from the funds so deposited all checks which may be drawn by the

administrator of the department of finance, and shall make weekly reports to the council of the amounts deposited to the credit of the said several accounts, the amounts paid out from each, and the balance remaining on hand. The council may change its fiscal agent whenever the public interests may warrant.

SEC. 21. Be it further enacted, etc., That it shall be the duty of the council, at its first regular meeting after its induction in office, or as soon thereafter as practicable, to elect a secretary, whose duty it shall be to keep a correct record of all the proceedings of the council, to certify to the mayor all ordinances and resolutions passed by the council, and to perform such other duties as may be prescribed by the council, who shall hold his office for one year, unless sooner removed, as is provided for in this act, and who shall receive a salary, to be fixed by the council, not to ex-
840 ceed five hundred dollars per annum; also a city attorney, learned in
the law, who shall be the legal adviser of the corporation in all matters in which legal advice may be necessary, and shall represent the corporation in all judicial proceedings and actions to which it may be a party, or in which it may have an interest; and shall in all cases, when required by the mayor *of* any administrator of department, furnish a written opinion of the legality or constitutionality of any law or ordinances to be submitted to or pending before the council, or as to any questions involved in the discharge of their respective duties; he shall hold his office for a term of one year unless sooner removed, as provided for in this act, and shall receive a salary, to be fixed by the common council, not to exceed twelve hundred dollars per annum; he shall be allowed no extra fee or compensation, nor shall any other attorney be appointed to assist him, unless by a vote of a majority of the members of the
841 council, and shall be empowered to employ one or more clerks, as
the council may deem necessary and allow; also, a city surveyor, whose duty it shall be to furnish the council, or any other administrator of department, with all plans, estimates, and other information pertaining to the protection, repair, construction of any public works of improvements, and, after completion of the same, to report the manner in which the same shall have been executed, and shall perform such other duties as may be assigned to him by the council; he shall hold his office for one year, unless sooner removed, as provided in this act, and shall receive a salary not to exceed five dollars per day when actually employed, to be fixed by the council.

Be it further enacted, etc., That in all judicial proceedings whereby law bond and security are required from litigants the city of Shreveport shall be dispensed from furnishing bond or security, or making affidavit.

Be it further enacted, etc., That all the right, title, and interest
842 of the city of Shreveport to all lands, tenements, hereditaments,
bridges, ferries, streets, roads, wharves, markets, stalls, levees, and landings, places, buildings, and other property of whatever description, and wherever situated, and with all goods, chattels, money, effects, debts, dues, demands, bonds, obligations, judgments, liens, actions, and rights of actions, books, accounts, and vouchers be, and they are hereby, vested in the city of Shreveport, as incorporated by this act; provided that all the estates, income, funds, or property of any description, now held in trust by said city of Shreveport, or which shall have been specially pledged or affected by the payment of any debt, shall be held by the city of Shreveport under

this act, upon and for the same uses, trusts, limits, limitations, charities,
and conditions as the same are now held, and all other indebtedness or
liabilities of the city of Shreveport, whether in form of bonds, notes, inter-
est coupons, cash warrants, or any other species of obligations what-
843 ever, shall be assumed and paid by the city of Shreveport, as con-
stituted and incorporated by this act, and the said city is declared
liable therefor; and upon the organization of the council of the city of
Shreveport, as provided for in this act, all the powers, rights, privileges,
and immunities possessed and enjoyed by the mayor and trustees of the
city of Shreveport, as at present constituted, shall cease and terminate, and
be vested in the city of Shreveport as established by this act.

SEC. 22. Be it further enacted, etc., That upon the organization of the
council created by this act it shall be the duty of the mayor and trustees,
treasurer, and controller, and all other officers of the city of Shreveport, to
forthwith turn over and deliver to the mayor and council, as created and
constituted by this act, all books, papers, records, documents, moneys,
bonds, notes, obligations, evidences of indebtedness, and every de-
844 scription of movable property whatsoever belonging to the said city
of Shreveport and in the use of or under the control of any of their
respective departments, and that if any person holding under the city of
Shreveport, as constituted previous to the passage of this act, have posses-
sion or control of any property or effects of any kind whatsoever belonging
to the said city, and shall refuse or neglect to forthwith deliver up the
same to the mayor and council created by this act, he shall be deemed
guilty of a misdemeaner and punished by a fine not exceeding one thousand
dollars and imprisonment not exceeding six months.

SEC. 23. Be it further enacted, etc., That all laws, or parts of laws, in conflict with this act be, and the same are hereby, repealed.

SEC. 24. Be it further enacted, etc., That this act shall go into effect from and after its passage.

(Signed) GEO. W. CARTER,
Speaker of the House of Representatives.
(Signed) OSCAR J. DUNN,
Lieutenant-Governor & President of the Senate.

Approved April 27, 1871.
(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.
GEO. E. BOVEE,
Secretary of State.

845 *Hearing & submission of cause.—Extract from the minutes, November term*, 1878.

NEW ORLEANS, *Monday, February* 3d, 1879.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

CHAS. E. LEWIS
vs.
CITY OF SHREVEPORT. } No. 8343.

This cause was called for trial—Lacey & Butler and Alfred Ennis for pl'ff; A. H. Leonard and Rouse & Grant for def't—when, by written consent of counsel, the intervention of a jury is waived, and the cause submitted to the court upon an agreed statement of facts and briefs to be furnished within the time set forth in said agreement.

846 UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and district of Louisiana.

CHARLES EDWARD LEWIS
versus No. 8343.
THE CITY OF SHREVEPORT.

Opinion of Hon. William B. Woods, U. S. circuit judge, March 31st, 1879.

U. S. circuit court, district of Louisiana.

CHARLES EDWARD LEWIS
vs.
THE CITY OF SHREVEPORT.

The suit was brought to recover the amount of certain overdue interest coupons belonging to ninety negotiable bonds for one thousand dollars each issued by the defendant.

The parties waived the intervention of a jury, and, having agreed upon the facts, submitted the case to the court upon the law arising on the agreed facts.

It appeared from the agreement of the parties that on April 27, 1871, an act was passed by the legislature of Louisiana "to incorporate the city of Shreveport, to define its limits, and provide for its better police and municipal government."

This act constituted the charter of the city at the time the bonds in question were issued and sold. Section 3 of the charter provided that the government of the city of Shreveport and the administration of its affairs should be vested in a mayor and four administrators, who should form its council.

847 Section 10 declared "the council shall have full authority to make and pass such by-laws and ordinances as are necessary and proper, * * * to regulate and make improvements to the streets, public squares, &c., and if for such purpose the land of any private person or body corporate is necessary to be had the said city council shall have the right and power of purchasing the same at a reasonable price, or cause the same to be expropriated," &c.

Section 17 declared "the council may, when it deems it for the public interest, provide by ordinance for the paving, opening, or widening of any street or streets, or the construction of a city hall, markets, and other structures of public necessity and utility, the cost of which shall be paid by the city; provided that whenever the amount or costs of paving said streets or erecting the structures aforesaid from time to time exceeds the amount of funds in the city treasury, then the council are hereby authorized to issue bonds of the city running forty years, with interest coupons attached, and bearing interest at the rate of and not exceeding ten per cent.

per annum, payable semi-annually, * * * and the said council shall have power to dispose of said lands in such manner as they may deem for the best interest of the city, the proceeds of which shall be used solely for the purpose for which they shall be issued."

Section 20 declared "no ordinance . * * * providing for the purchase or sale of real estate shall be passed except by a majority of the council," &c.

On June 26, 1872, the city council enacted an ordinance which provided for the purchase of certain real estate, to be donated to the Texas and Pacific Railroad Company, upon which the company was perma- 848 nently to establish and maintain its depots and machine shops; which provided for the payment of the purchase price of said real estate by the issuing and sale of the bonds of the city to the amount of $260,000, payable forty years after date, with interest at eight per cent. per annum, payable semi-annually, and with interest coupons attached; which provided for the levy of an annual tax to pay the principal and interest of the said bonds, and which provided that said ordinance should be submitted to a vote of the people of the city for their ratification and approval. This ordinance is the only one by virtue of which the bonds in question were issued and sold.

On July 1, 1872, the said ordinance was submitted to a vote of the people of the city, and seven hundred and five votes were cast for and three votes against its ratification and approval.

On July 1, 1872, in pursuance of the ordinance and vote aforesaid, and for the purposes named in the ordinance, the city issued its bonds for two hundred and sixty thousand dollars ($260,000).

On July 19, 1872, the city council passed an ordinance authorizing George Williamson, esq., who was appointed the agent of the city for that purpose, to sell said bonds at sixty cents on the dollar.

On July 23, 1872, the city council appropriated money to pay the cost of engraving said bonds and the expenses incurred by Williamson in his effort to sell them.

On October 31, 1872, the city attorney, as such officer, gave an opinion that the city had power to issue said bonds, and that the object for which said bonds was issued was of public utility and clearly within the power conferred by the city charter.

On the same day the city council passed an ordinance whereby said Williamson was appointed special agent of the city to sell said 849 bonds, and upon his failing to sell authorized him to execute the promissory note of the city for $130,000, and to pledge said bonds as security for the payment of the same, and to pledge the faith of the city to make good any arrangement entered into by him in the sale of said bonds or in raising money thereon. Williamson, as agent for the city, appointed one Jamison, of Philadelphia, to sell the bonds, and the city council, by ordinance, ratified the appointment.

On November 7, 1872, the city council passed an ordinance whereby Williamson was authorized to turn over to Thomas A. Scott, esq., $200,000 of said bonds upon his assuming the payment of the indebtedness incurred by the city in the purchase of said real estate to be donated to the Texas and Pacific Railroad Company.

The city council on December 17, 1872, passed an ordinance levying a tax to pay the principal and interest of said $260,000 of bonds.

The city administrator of finance on March 1, 1873, made an official statement of the amount of the indebtedness of the city in which statement was included the said bonds, and on March 27, 1873, Williamson, as agent of the city, wrote to Jamison a letter in which he stated that ample provision had been made by ordinance enacted by the city council for the payment of the principal and interest of the $260,000 of bonds.

On June 13, 1873, the city council passed an ordinance pledging the faith of the city to pay the said promissory note made by Williamson, as its agent, to secure the payment of which the said $260,000 of bonds had been hypothecated, and instructing the city administrator of finance to hold sacred for such purpose the tax levied by ordinance of December 17, 1872.

The official budget of the city, published on November 27, 1875,
850 contained a statement of the indebtedness of the city on that day,
in which was included the $90,000 of said bonds held and owned by the plaintiff, the same being the bonds to which the coupons sued on belong.

The plaintiff is a bona fide holder of the bonds to which the coupons sued on belong, and of said coupons, having purchased said bonds with the coupons attached in open market, paying therefor eighty-five cents on the dollar.

Both bonds and coupons are negotiable in form, being payable to bearer.

The Texas and Pacific Railroad Company has never been chartered by the State of Louisiana, but held a lease from the Vicksburg, Shreveport and Texas Railroad Company of the railroad between Shreveport and the Texas line, which lease is still in force.

The coupons sued on were produced by the counsel of the plaintiff and filed in evidence in the cause.

Messrs. Alfred Ennis, Geo. S. Lacey, and Frank N. Butler, for plaintiff.

1. The defendant had power under it charter to make and issue the bonds. See provisions of charter set out in the agreed statement of facts.

The construction put upon the charter by the municipal corporation and people, and followed by them, on the strength of which the municipal corportion has sold its bonds and received value therefor, will be maintained by the courts even though the authority to issue the bonds is derived from an ambiguous and ill-expressed statute. (James vs. Milwaukee, 16 Wall., 159; Woodhull vs. Beaver, 3 Wallace, 274; Luling vs. City of Racine, 1 Bissell, 314; Van Hostrup vs. Madison, 1 Wall., 291; City of Memphis vs.
Brown, 11 Am. Law Register, (n. s.); 629; Gas Company vs. San
851 Francisco, 9 Cal., 469; Mayer vs. Muscatine, 1 Wall., 373; Schenck
vs. Supervisors of Marshall County, 1 Biss., 536.)

2. That having issued the bonds sold them in open market, received and retained the consideration therefor, and the bonds having subsequently come to the hands of the plaintiff bona fide and for value, the city is estopped from denying its authority to issue the same or denying the validity thereof. (Hood vs. N. Y. & N. H. R. R. Co., 22 Conn., 502; Treadwell vs. Commissioners, 11 Ohio, 183; Hopple vs. Brown, 13 Ohio St., 311; Garrett vs. Van Horn, 7 Ohio St., 397; Goshen vs. Shoemaker, 12 Ohio St.. 623; Supervisor vs. Schenck, 5 Wall., 772; City of Nauvoo vs. Ritter, 97 U. S.; Society for Savings vs. The City of New London, 29 Conn., 174; Ferguson vs. Landrum, 1 Bush. Ky., 548; Zabriskie vs. Cleveland,

Col. & Cin. Railroad Co., 23 How., 381; Cromwell vs. Sac County, 96 U. S., 51.)

Messrs. A. H. Leonard, J. D. Rouse, William Grant, and W. A. Seay for defendant.

WOODS, *Circuit Judge:*

The power of the city of Shreveport to issue the bonds in question is denied.

The power according to the claim of plaintiff is to be found in section 17 of the city charter, which authorizes the council "when it deems it for the public interest to provide for the construction of a city hall, markets, and other structures of public necessity and utility," and under certain circumstances to issue bonds in payment thereof, and section 20, which says, "no ordinance for the purchase or sale of real estate shall be passed except by a majority of the council."

Under these provisions it claims that the city council had author-
852 ity to issue and sell bonds of the city to the amount of two hundred
and sixty thousand dollars ($260,000), for the purpose of paying for real estate to be given to a foreign railroad corporation on which to establish and maintain its depots and machine shops.

To my mind the proposition seems utterly untenable. The power given is to erect a city hall, markets, and other structures of public necessity and utility. Clearly the purpose for which the bonds in suit were issued was not to erect a city hall or markets. Does the donation of land to a railroad company to build its depots and shops on fall within the terms, "other structures of public necessity and utility."

Lord Bacon observed that, "as exception strengthens the force of a law in cases not excepted, so enumeration weakens it in cases not enumerated." Hence the celebrated rule that "when particular words are followed by general ones, as if after enumeration of several classes of persons or things there is added, 'and all others,' the general words are restricted in meaning to objects of like kind with those specified." (1 Bishop's Crim. Law, sec. 275.)

Applying this rule to the interpretation of the clause of the charter relied on for authority to issue bonds, it is clear how perfectly baseless is the construction claimed. The charter under this rule means to authorize the city council to erect a city hall, markets, and other like structures of public necessity and utility. This would include houses for fire-engines, water-works, gas-works, houses for public schools, all to be owned by the city, and in which all the citizens should have an interest. To stretch the clause so as to authorize the purchase of land by the city to be given away to a private corporation on which it was to erect structures for its own uses is to my mind utterly unwarrantable. Can it be claimed for a mo-
ment that such a use of the power to issue bonds entered into
853 the contemplation of the legislature?

"A municipal corporation is but a subordinate branch of the government. It represents the State sovereignty in a limited district and for specified purposes. These purposes are local government and police.

"The power of taxation is granted as a means of carrying out these purposes. The diversion of these revenues to other purposes is unlawful and ultra vires. If it is desirable that a municipal body should have the power of subscribing to railroads or plank-roads, or of issuing commercial securities to be sold in the financial markets, it is time enough for it to do so when authorized thereto by legislation. It possesses no powers, but such as are given to it expressly or by necessary implication."

(Mr. Justice Bradley, in Chisholm vs. The City of Montgomery, 2 Woods, 594. See also Dillon on Municipal Corporations, sec. 106; Mayor v. Ray, 19 Wall., 468; Knapp v. Mayor of Hoboken, 39 N. J. L., 394; Hamlin v. Meadville, 6 Neb., 227; Jones on Railroad Securities, sec's 222, 223.)

Applying this rule to the question in this case, can it be said that the power exercised by the city council of Shreveport, in issuing bonds for the purpose mentioned, is expressly given by the charter or results from necessary implication? It seems to me that it is unnecessary to multiply words to show that the power is not conferred. It is perfectly obvious that such was not the purpose of the legislature. The absence of such a power is too plain for argument.

But the plaintiff claims that the people of the city, and judicial, legislative, and executive departments of its municipal government have placed
a construction on its charter and on the ordinance by virtue of
854 which the bonds were issued which justifies the issue of the bonds,
and that the city is therefore liable to pay them.

This proposition amounts to this, that a municipal corporation can clothe itself with power to issue bonds for extraneous purposes by asserting that it possesses it.

On the other hand the current of authority is unbroken that to authorize a municipal corporation to subscribe for stock in a public improvement, and pay for it by the issue of negotiable securities, there must be a legislative grant of power either by express terms or by necessary implication. (Thompson v. Lee County, 3 Wall., 330; Dillon on Municipal Corporations, sec. 106, and many cases can be cited.)

The proposition that when the power has not thus been conferred it may be acquired by a municipal corporation by the persistent assertion that it has the power, and by acting as if it had, it is inconsistent with all the cases cited.

The intention of the legislature is to be sought for; that, whatever it may be, constitutes the law. (James v. Milwaukee, 16 Wall., 161.)

In deciding whether a municipal corporation has power to issue bonds for a specific purpose, the construction put upon the charter by all parties in interest, and whose rights have grown up under that contract, is entitled to weight only in a case where the power may be fairly inferred from the terms of the charter. In such a case doubts and ambiguities will be resolved in favor of the power.

Thus in Woodhull v. Beaver County, 3 Wallace, jr., Judge Grier says, "But now when all parties have given their construction to the act, and it
can by its terms be made to include the power, the court will not
855 exercise astutia to give it a stringent interpretation in order to en-
able a county to disown its obligations after having received their
value."

To the same effect are the following cases: Jones v. Milwaukee, 16 Wall., 159; Van Hostrup vs. Madison, 1 Wall., 297; Meyer v. Muscatine, 1 Wall., 393. But in all these cases there was reasonable grounds in the acts of the legislature for the construction by which the power to issue the bonds was derived.

In this case authority for the power exercised is wholly wanting, and by no reasonable or fair construction can it be presumed.

The plaintiff further claims that by the acts of its people and officers set out in the record, and by the facts that the city has received and still retains the consideration for which the bonds were sold, she is estopped from denying her authority to issue the same, and from denying their validity. The authorities cited by counsel for plaintiff from the U. S. court reports to sustain their proposition do not sustain it. They merely decide that when the power to issue bonds is given to a municipal corporation the corporation is estopped from setting up irregularities in their issue.

But where the power is wanting there is no estoppel, and there can be no ratification by the municipal corporation or its officers.

In Chisholm v. The City of Montgomery, supra, Mr. Justice Bradley said, "The plea that the city is estopped by the acts of its officers, by the resolution of the city council, or by the negotiable form or other matter in the bonds themselves from denying the authority of said officers to pledge the faith of the city in aid of said plank roads, and to issue the bonds in question, cannot be maintained.

"Public officers cannot acquire the authority by declaring they have it.
They cannot thus shut the mouth of the people whom they repre-
856 sent. * * * * * No municipal or political body can be
estopped by the acts or declarations of its officers from denying
their authority to bind it."

In the case of Marsh v. Fulton County, 10 Wall., 684, the Supreme Court of the United States says, "It is also contended that if the lands in suit were issued without authority their issue was subsequently ratified, and various acts of the supervisors of the county are cited in support of the supposed ratification. These acts fall very far short of showing any attempted ratification even by the supervisors. But the answer to all of this is that the power of ratification did not lie with the supervisors. A ratification is in its effect upon the act of the agent equivalent to the possession by him of a previous authority. It operates upon the act ratified in the same manner as though the authority of the agent to do the act originally existed. It follows that a ratification can only be made when the party ratifying possesses the power to perform the act ratified."

So in Loan Association v. Topeka, 20 Wall., 667, the same court says, "We do not attach any importance to the fact that the town authorities paid one installment of interest on their bonds. Such a payment works no estoppel. If the legislature was without the power to authorize the issue of these bonds, and its statute attempting to confer such authority is void, the mere payment of interest which was equally unauthorized cannot create of itself a power to levy taxes resting on no other foundation than the fact that they have once been illegally levied for that purpose." See also Town of South Ottowa v. Perkins, 94 U. S., 266.

The want of power in the officers of the city of Shreveport to ratify
the issue of bonds is as clear as their want of power to issue the bonds in
the first instance. When contracts are ratified it must be by a per-
857 son or body having the power to ratify. (Delafield v. The State
of Illinois, 2 Hill, 159; Hotchkiss v. Kent, 8 Michigan, 526; Du-

buque Female College v. , 13 Iowa, 555; Estey v. Inhabitants of Westminster, 97 Mass., 324.)

The decisions of the Supreme Court of the United States are uniform to the effect that a municipal corporation cannot, without legislative authority, issue bonds in aid of an extraneous object. (Marsh v. Fulton County, 10 Wall.; Pendleton v. Amy, 13 Wall., 297; Kennicott v. The Supervisors, 16 Wall., 452; St. Joseph Township v. Rogers, 16 Wall., 644; Harshman v. Bates County, 92 U. S., 569; Town of Colona v. Eaves, 92, U. S., 484; Town of South Ottowa v. Perkins, 94 U.S., 260.)

That power cannot originate or be derived from a vote of the people. The source of the authority is the legislature.

In this case there was no power in the city of Shreveport to issue the bonds in question. All persons dealing in the bonds are bound to take notice of the fact. There can be no bona fide holders without notice when there is no power to issue the bonds.

The bonds are void, and the holders are presumed to have had notice of the fact when they purchased them.

There must be judgment, on the agreed facts, for defendant.

858 *Judgment.—Extract from judgment book.*

Circuit court of the United States, fifth circuit & district of Louisiana, November term, 1878.

NEW ORLEANS, *Monday, March* 31*st*, 1879.

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, circuit judge.

CHARLES EDWARD LEWIS
vs.
THE CITY OF SHREVEPORT. } No. 8343.

This day came the parties, by their attorneys, and filed a stipulation in writing waiving the intervention of a jury and submit this cause to the court upon an agreed statement of the facts and upon the issues of law arising thereon.

And the court, being fully advised in the premises, finds that the facts embodied by the parties in their agreed statement of facts are true, and that the plaintiff is the bearer and owner of the coupons described in the declaration, and the same are produced in court.

859 And as conclusions of law upon said facts, the court is of opinion, and finds that the defendant, The City of Shreveport, was without lawful authority to issue said bonds and coupons, and that the same are null and void, and not binding on the defendant.

Therefore it is considered by the court that said defendant go hence without day, and recover of the plaintiff its costs in this behalf expended to be taxed.

Ordered, that plaintiff pay his own costs.

And thereupon the plaintiff excepted to said conclusion of law found by the court and to said judgment of the court upon the facts aforesaid, and prayed that his said exception might be incorporated in the record in this cause, which is now here accordingly done.

Judgment rendered March 31st, 1879.

Judgment signed April 7th, 1879.

(Signed) W. B. WOODS, *Judge.*

860 *Petition & order for writ of error.—Filed Feb'y 23d,* 1880.

U. S. circuit court, fifth circuit, district of Louisiana.

CHARLES EDWARD LEWIS
vs.
THE CITY OF SHREVEPORT, IN THE PARISH OF Caddo, in the State of Louisiana. } No. 8343.

To the honorable the judges of the United States circuit court in and for the 5th circuit, district of Louisiana:

The petition of Charles Edward Lewis respectfully represents:

That in the above entitled and numbered cause final judgment, about the 31st day of May, A. D. 1879, was rendered in favor of The City of Shreveport, defendant therein, and against your petitioner, the plaintiff in said cause; that, in your petitioner's opinion, a manifest error attaches to the said judgment, working great and irreparable loss and injury to your petitioner, and that in consequence of such error your petitioner is desirous of appealing from said judgment to the Supreme Court of the 861 United States. The premises considered, your petitioner prays that such appeal may be allowed, and that a writ of error from the judgment aforesaid may be granted to him herein, returnable before the Supreme Court of the United States, at the city of Washington, on the second Monday of October, A. D. 1880, and that your petitioner may have such other and further order as may be suited to law and the nature of the case.

And, as in duty bound, petitioner will ever pray, &c.

(Signed) ALFRED ENNIS,
LACEY & BUTLER,
Attorneys.

Order.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the second Monday of October, 1880, the petitioner giving bond in the sum of two hundred dollars, with good and solvent security, conditioned as the law directs.

New Orleans, February 23, 1880.

(Signed) W. B. WOODS, *Judge.*

862 *Bond for writ of error.—Filed February 23d,* 1880.

Know all men by these presents that we, Charles Edward Lewis, as principal, and Geo. S. Lacey & Frank N. Butler, as sureties, are held and firmly bound unto The City of Shreveport, in the Parish of Caddo, in the State of

Louisiana, in the full and just sum of two hundred dollars, to be paid to the said City of Shreveport, her certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 23d day of February, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Charles Edward Lewis is plaintiff, and
The City of Shreveport is defendant, judgment was rendered against
863 The said Charles Edward Lewis, plaintiff, and the said Charles
Edward Lewis having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Shreveport, citing and admonishing the said city to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Charles Edward Lewis shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) CHARLES EDWARD LEWIS, [SEAL.]
Per FRANK N. BUTLER, *Att'y.*
GEO. S. LACY. [SEAL.]
FRANK N. BUTLER. [SEAL.]

Approved Feb. 23, 1880.
(Signed) W. B. WOODS,
Circuit Judge.

864 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 863 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Charles Edward Lewis vs. The City of Shreveport, No. 8343 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 16th day of April, A. D. 1880.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestation as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 16th day of April, A. D. 1880.

W. B. WOODS, *Judge.*

865 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Charles Edward Lewis and The City of Shreveport, in the Parish of Caddo, in the State of Louisiana, a manifest error hath happened, to the great damage of the said Charles Edward Lewis, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 23rd day of February, in the *the* year of our Lord one thousand eight hundred and eighty.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 8343. Charles Edward Lewis versus City of Shreveport, in the Parish of Caddo, in the State of Louisiana. Writ of error. Filed Feb'y 23d, 1880. T. V. Coupland, d'y clerk.

866 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to The City of Shreveport, in the Parish of Caddo, in the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Charles Edward Lewis is plaintiff in error and you, the said City of Shreveport, are defendant in error, to show cause, if any there be, why the judgment rendered against the said Charles Edward Lewis, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23rd day of February, in the year of our Lord one thousand eight hundred and eighty.

W. B. WOODS, *Judge.*

867 Service accepted.

A. H. LEONARD,
Att'y for City Shreveport.

FEB'Y 24TH, 1880.

(Indorsed:) United States circuit court. No. 8343. Charles Edward Lewis vs. City of Shreveport, in the Parish of Caddo, in the State of Louisiana. Citation. Marshal's return.

868 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

CHARLES EDWARD LEWIS, PLAINTIFF IN ERROR,
vs.
THE CITY OF SHREVEPORT, IN THE PARISH OF Caddo, in the State of Louisiana, defendant in error.

The plaintiff in error in the above and foregoing entitled suit assigns errors therein as follows, to wit:

First. That the finding of the court below was not sustained by the evidence.

Second. That the finding of the court below was contrary to law.

Wherefore the said plaintiff in error prays that the said finding of the court below be reversed. That citation issue to the defendant in error herein according to law.

ALFRED ENNIS,
Counsel for Plaintiff in Error.

869 In the Supreme Court of the United States.

CHARLES E. LEWIS, PL'FF IN ERROR, } No. 799. Oct. T. '80.
vs.
THE CITY SHREVEPORT, DEF'T IN ERROR. } No. . Oct. T. '81.

Whereas this action was brought to recover upon seven hundred and eighty-five (785) interest coupons of forty dollars ($40) each, amounting to $31,400.00, with interest on the said coupons from the dates at which they severally became due, which said coupons & the bonds from which they were cut were alleged to have been issued by the said defendant, The City of Shreveport;

And whereas the petition filed in this cause seeking to recover upon the aforesaid coupons contains a separate count upon each of said 785 coupons, all being similar except that the stating part and conclusion of the petition is not included in each, & only in the first & last, the only other difference being as to the dates when the coupons become due & the numbers of the bonds from which cut;

870 And whereas the printing of the entire petition with said 785 counts in the record will be a great & unnecessary expense which can be avoided:

It is therefore hereby understood, stipulated, & agreed that all of said 785 counts need not be printed; that all the stating part of said petition, including the first count thereof, & all the closing part thereof, including the last count, together with all exhibits, or copies of bonds or coupons, &c., attached to said petition may be printed, and this agreement shall stand in lieu of the 783 counts thereof not printed. The said printed record thereby reduced to the extent of the exclusion of said 783 counts.

JAMES GRANT,
LACEY & BUTLER,
Att'ys for Pl'ff in Error.
B. F. JONAS,
Att'y for Def'd't in Error.

(Indorsed:) Supreme Court U. S. 1881. Oct'r term. No. 517. Charles Edward Lewis, pl'ff in error, vs. The City of Shreveport et al. Stipulation omitting certain portion of record in printing. Filed 6 January, 1882.

(Stamp:) Office Supreme Court, U. S. Filed Jan. 6, 1882. James H. McKenney, clerk.

(Indorsement on cover:) No. 230. Charles Edward Lewis, plaintiff in error, vs. The City of Shreveport, in the Parish of Caddo, in the State of Louisiana. Louisiana C. C. U. S. Filed 18th June, 1880.

108-282

FILED
FEB 8 1893

Supreme Court of the United States.

NO. 230.

CHARLES EDWARD LEWIS,
Plaintiff in Error,
—vs.—
THE CITY OF SHREVEPORT, IN THE PARISH OF CADDO, IN THE STATE OF LOUISIANA,
Defendant in Error.

In Error to the Circuit Court of the United States for the District of Louisiana.

ARGUMENT FOR PLAINTIFF IN ERROR BY JAMES GRANT AND WHIT. M. GRANT.

EGBERT, FIDLAR & CHAMBERS, DAVENPORT, IOWA

Supreme Court of the United States.

NO. 230.

CHARLES EDWARD LEWIS,
Plaintiff in Error,
—VS.—
THE CITY OF SHREVEPORT, IN THE PARISH OF CADDO, IN THE STATE OF LOUISIANA,
Defendant in Error.

In Error to the Circuit Court of the United States for the District of Louisiana.

ARGUMENT FOR PLAINTIFF IN ERROR BY JAMES GRANT AND WHIT. M. GRANT.

STATEMENT OF CASE.

Record, p. 1: This is an action brought to recover upon 785 past due interest coupons of $40 each, amounting to $31,400, with interest thereon, cut from 90 bonds issued by defendant in error, bearing date July 1st, 1872, payable July 1st, 1912, to bearer, in sums of $1,000 each, with eight per cent semi-annual interest payable in New York City. Said bonds were issued to raise money with which to pay for land bought by the city under an ordinance of the Mayor and administrators of said city, adopted June 26th, 1872, and ratified by a vote of the people thereof July 1st, 1872 — which said land was donated by said city to the Texas & Pacific Railroad Company, on which to permanently locate its depot and machine shops.

A separate count was brought on each of said 785 coupons, and made a very expensive and cumbersome record, and, to avoid printing so much unnecessary matter, 783 of said counts are omitted by agreement. (Record, p. 35.)

Said bonds each recite, that, " For the performance of this obligation, the faith and property of the corporation of the city of Shreveport are irrevocably pledged, and a tax is levied upon all the taxable property of said city annually to pay the said interest, and to create a sinking fund to pay the principal when the same becomes due. This bond is issued in obedience to an ordinance of the Mayor and administrators of said city, adopted on the 26th day of June, 1872, in aid of the Texas & Pacific Railroad Company, and ratified by a vote of the people of said city on the 1st July, A. D. 1872."

The answer (Record, p. 6) denies that the authority exists in the charter for the issue of the bonds, and alleges that the ordinance was not properly passed; that the payment of the debt was not provided for as required by law; that there was no ratification of the ordinance, as alleged; that the Texas & Pacific Railroad Company is a foreign corporation, having no charter rights or existence in Louisiana; that the city council purchased a tract of land, described, for the city and donated it to said company, which it had no authority to do, and, in carrying out its purpose so to do, assumed to pass, but only to a second reading and not finally, on June 26th, 1872, a pretended ordinance; that said council caused to be executed 260 forty-year bonds of $1,000 each, with coupons attached, purporting to be bonds of the city, and delivered them to George Williamson, and instructed him to negotiate them, borrow money on them, to execute and sign the note of the city therefor, and pledge said bonds as security — all of which it had no authority to do; that plaintiff acquired said bonds through Jamison & Co., who had no right to transfer or dispose of them; that all said facts are apparent on inspection of the charter and records of defendant, and plaintiff is affected with knowledge that the bonds are not negotiable paper, and plaintiff could not be a *bona fide* holder.

A jury was waived in writing and cause submitted to the court on an agreed statement of facts. (Record, p. 25.)

The court found the facts specially as they had been agreed upon (Record, p. 31); and, as a conclusion of law that the city was without lawful authority to issue said bonds and coupons, and that the same are null and void and not binding on defendant; hence it was ordered that defendant go hence without day and recover of plaintiff its costs, etc. (Record, p. 31.)

The plaintiff excepted to said conclusions of law and to said judgment of the court upon the facts, and prayed that said exception be entered of record, which was done. (Record, pp. 31 and 32.)

The court filed a written opinion in the cause setting forth the reasons for its conclusion. (Record, p. 25.)

Plaintiff prayed a writ of error, which was allowed (Record, p. 32), and executed a bond for said writ, which was duly approved. (Record, p. 32 and 33.)

Citation was duly issued and served. (Record, pp. 34 and 35.)

And plaintiff, by his then attorney, Alfred Ennis, assigned errors upon said record:

First — That the finding of the court below was not sustained by the evidence; and

Second — That the finding of the court was contrary to the law. (Record, p. 35.)

From said agreed facts and facts as found by the court (Record, p. 12, *et seq.*), it appears that the charter of the city of Shreveport is in the Acts of Louisiana, session of 1871, p. 218, and a copy is annexed (Record, p. 14). Section 1 defines the city limits; section 2 is as follows:

"SECTION 2. *Be it further enacted, etc.*, That the inhabitants of the city of Shreveport, laid out as above, are hereby constituted and declared to be a corporation and body politic in fact and law by the name and style of 'The City of Shreveport,' and by the same name shall have perpetual succession; shall be capable of suing and being sued, and of prosecuting and defending, in all courts, all actions and matters whatsoever; may purchase, receive by donation, and hold property of all kinds within and without the limits of the city; also, may have and use a common seal."

Section 3 provides that the city government shall be vested in a Mayor and four administrators — one each of finance, improvements, public accounts, and assessments — and shall form the city council.

Sections 4, 5, 8, 9, 12, 13, 14, 15, 16, 18, 19, and 22 are not material for the consideration of this case.

SECTION 6. The Mayor shall be the executive officer of the city, affix the city seal to all corporate acts, etc.

Section 7 provides that there shall be four subordinate departments of the city government, under the special control of the administrators thereof. First, department of finances, which has control of all matters relating to the finances of the city; shall, among other things, keep a correct account of all the indebtedness of the city, and of the resources, revenue, and disbursements; regulate collection of taxes, and perform such other functions and duties as may be prescribed by the council. Second, a department of improvements. Third, a department of public accounts, which shall, among others, have general superintendence of all claims and demands against the city, contracts, keep a record of ordinances, make appropriations for general or special claims, issue warrants for payment of claims, and each year lay before the council a report of the indebtedness of the city, etc. Fourth, a department of assessments.

SECTION 10. The council shall have power to pass such ordinances as may be necessary and proper, * * * * to make, repair, enlarge, and improve streets, and, if land is necessary therefor, to purchase the same, or cause it to be appropriated as provided by law.

Section 11 requires the council each year to have made out a detailed estimate of the items of liabilities and expenditures for said year, and such rate of taxation not exceeding $1.75 per $100 shall be assessed as is necessary to meet said estimated liabilities and expenditures. (We suppose this is called the City Budget.)

Section 17 is as follows:

"SECTION 17. *Be it further enacted, etc.*, That the city council may, whenever it shall deem it to the public interest, by ordinance provide for the paving, opening, or widening of any street or streets, or any part thereof, or in the construction of a city hall, markets, and other structures of public necessity and utility, the cost of which shall be paid by the city: *Provided*, that whenever the amount or cost of paving said streets or erecting the structures aforesaid, from time to time exceeds the amount of funds in the city treasury, then the common council are hereby authorized and empowered to issue bonds of the city running forty years, with interest coupons attached, and bearing interest at the rate of and not exceeding ten per centum, payable semi-annually either at the cities of New Orleans, Shreveport, or New York, at the option of the holder thereof; and said council shall have power to dispose of said bonds in such manner as they may deem for the best interest of the city, the proceeds of which shall be used solely for the purpose for which they shall be issued. They shall also, by ordinance, provide for levying a tax, from time to time, in order to provide for the payment of the principal and interest of said bonds: *Provided*, that whenever the city council of Shreveport desires to use any particular patented pavements for the purposes of paving or improving the streets, or any part of the streets, of said city, then the council of said city are hereby authorized, by resolution or ordinance, to fix the price to be paid for such pavement, and to let the same under contract to the licensee or assigns of said patented pavement."

Section 20 — the first paragraph — is as follows (the balance not material here):

"*Be it further enacted, etc.*, That the council shall hold a regular meeting on some stated day of every week. Their sessions shall be public; their proceedings shall be duly recorded, and shall be published in an official journal selected by them. Three members shall be requisite to constitute a quorum for doing business. No ordinance levying a tax, making an appropriation over five hundred dollars ($500), or providing for the purchase or sale of real estate, shall be passed except by a majority of the council; nor shall a final vote on the same be taken except at a regular meeting subsequent to a previous regular meeting at which the same shall have been introduced and passed to its second reading; and the said ordinance, together with the vote on the same and the names of the members voting yea or nay, shall be published in the official journal — except in case of invasion, insurrection, pestilence, or inundation."

Section 21 provides, among other things, that it shall be the duty of the city council "to elect a city attorney, learned in the law, who shall be the legal adviser of the corporation in all matters in which legal advice may be necessary, * * * * and shall, in all cases when required by the Mayor or any administrator of department, furnish a written opinion of the legality or constitutionality of any law or ordinance to be submitted to or pending before the council, or as to any question involved in the discharge of their respective duties." And further: "That all the right, title, and interest of the city of Shreveport to all lands, tenements, hereditaments, * * * * and other property, of whatever description and wherever situated, * * * * be and they are hereby vested in the city of Shreveport, as incorporated by this act."

Section 23 provides that all laws and parts of laws in conflict therewith are repealed.

Section 24 provides that the act should take effect from its passage.

Approved April 27th, 1871. (Record, p. 24.)

Said agreed facts and findings also show that, on June 26th, 1872' an ordinance was introduced and passed (not having been considered on any other day) by the city council authorizing the purchase of real estate to be donated to the Texas & Pacific Railroad Company, upon which to permanently erect machine shops and depot, and providing that for said purchase 260 forty-year $1,000 eight per cent bonds with semi-annual coupons attached be issued (and is the only ordinance authorizing said issue of bonds); that said ordinance should be submitted to a vote of the people for approval, and also provided for a tax to pay the interest and create a sinking fund.

That July 1st, 1872, said election was held and said ordinance approved by a vote of 705 for to 3 against.

That said bonds were issued in pursuance of said ordinance and vote, and dated July 1st, 1872. (A copy of one of said bonds and coupons is in the record, pp. 2 and 3.)

That July 13th, 1872, the city, by resolution, appointed George Williamson its agent to sell and dispose of the bonds, and on the 19th, by ordinanance, directed him to sell them at sixty per cent, and on July 23d, 1872, appropriated $500 to pay his expenses, and a further sum to pay for engraving the bonds; and October 13th, 1872, by ordinance, appointed said Williamson to negotiate said bonds, and, if he could not negotiate them, to execute the note of the city for $130,000, payable four months after date, and to hypothecate the bonds as security, and pledged the faith of the city to make good any arrangement he might make in raising money on said bonds; and on November 7th, 1872, by ordinance, authorized him to turn over to Thomas A. Scott, two hundred of said bonds on his assuming the payment of said notes given for the purchase of said property. Said Williamson, agent, appointed B. K. Jamison & Co. his agents to negotiate the sale of said bonds, and this the city, by ordinance, duly ratified; and June 13th, 1873, the city, by ordinance, pledged itself to pay the note negotiated by said Williamson, to secure which said bonds were pledged, and instructed its administrator of finance to hold sacred the tax levied December 17th, 1872, to pay the principal and interest of said bonds.

October 13th, 1872, the city attorney gave to the city his opinion that it had power to issue the bonds, and that the public utility made the object within its corporate powers.

That the official statement of the administrator of finance, March 1st, of the indebtedness included said bonds.

That on March 27th, 1873, said Williamson, agent, advised Jamison & Co. that ample provision had been made by the city to pay the principal and interest of said bonds.

That the City Budget, published November 27th, 1875, included, among other indebtedness, 90 forty-year $1,000 bonds in the hands of purchasers in Europe (being the bonds in controversy).

That the Texas & Pacific Railroad Company has no charter from the state of Louisiana, or any right arising from any statute passed by the state in favor of said company, but it held a lease, not yet expired, from the Vicksburg, Shreveport & Texas Railroad Company of the railroad from Shreveport to the Texas state line.

That the plaintiff acquired said ninety bonds, with coupons attached, paying eighty-five per cent therefor, and is a *bona fide* holder for value.

The petition alleges, and the answer does not deny, that the city paid four instalments of interest, or series of coupons, falling due prior to these in suit. (Record, p. 2.)

ASSIGNMENTS OF ERROR.

The plaintiff assigns as errors:

First. The court erred in finding that the city was without lawful authority to issue said bonds and coupons, and that the same are null and void and not binding on said city of Shreveport.

Second. The court erred in entering judgment for the defendant and against the plaintiff for costs.

Third. The court erred in not finding that there was full authority for the issue of said bonds and coupons; that the same were valid and binding obligations of said city; and in not entering judgment for the plaintiff as prayed.

ARGUMENT.

The decision of the court below is based upon the theory that the power was not expressly given to issue the bonds, nor did it arise by necessary implication from the powers given, and, in arriving at this conclusion, gave effect only to sections 17 and 20, *supra*, of the charter. We think we can show that the court labored under a misapprehension of the true theory applicable to the case.

There was no constitutional prohibition in Louisiana against the purchase of said land or the issue of these bonds, and, as we understand, there is no general statute upon the subject, and that the sole power of the city is to be sought in the charter set out in the record (page 14).

In the discussion of the questions before the court, we must look to the decisions of the Supreme Court of Louisiana, of this court, and other good authorities passing upon similar questions.

I.

The court seems to have overlooked sections 2 and 21, *supra*, of the charter, which, we think, by necessary implication, clearly authorize the issue of these bonds. Section 2 gives absolutely and unqualifiedly, and unlimitedly, power to "*purchase, receive by donation, and hold property of all kinds within and without the limits of the city;*" and section 21 recognizes this right and power to purchase and hold land. It certainly is unnecessary to argue to this court that "*property of all kinds*" includes real property. The term is so used by all text writers to include real property, and we know of no decision holding that it does not. And section 21 in terms includes lands, tenements, hereditaments, and other property of whatever description and wherever situated.

But this question has not been left open to dispute. This charter and this identical purchase have been before the Supreme Court of Louisiana, and the power held to be fully conferred.

Edey *et al.* *vs.* City of Shreveport, 26 La. An., 636.

As this is a decision by the Supreme Court of the state construing one of its own statutes (said charter), and is in favor of the rights of the *bona fide* purchaser and against its own institution (said city), we deem it unnecessary to accumulate argument to show that the purchase could be made and the indebtedness created.

These sections do not provide for what purposes such property may or is to be used, nor how it is to be paid for; but the Supreme Court says it may be given to the railroad company and paid for by notes. *Eddy* v. *Shreveport, supra.*

The power of taxation is, of course, given to the city by the charter — not, however, in this section or for this purpose — but the power to raise money is by no means limited to taxation, not even by implication, *Eddy* v. *Shreveport, supra*; and section 17 expressly gives authority to issue bonds in certain cases where the cost exceeds the funds in the treasury; and it is clearly intended to be given in all cases where the amount to be raised is large, and would make a burdensome tax. *Eddy* v. *Shrevport, supra.*

The court will bear in mind that these bonds were issued to raise money with which to purchase land (agreed facts, sec. 2, Record, p. 12). It is true, the land was to be donated to the Texas & Pacific Railroad Company, and the bonds recite that they are issued in aid of said railroad. Still, that does not preclude us from showing, and the record does, in fact, show, the real consideration and purpose, and a valid one, and a purpose clearly within the power of the city under its charter — the purchase of land. *Eddy* v. *Shreveport, supra.*

It seems to have been the general policy of the state of Louisiana to allow municipal corporations to purchase, hold, and dispose of real property, even for speculative purposes, to the same extent as individuals; and to purchase on credit and give evidences of indebtedness — even notes and mortgages — for unpaid balances. And without any express grant to that effect, the Supreme Court held such to be their powers.

1st Municipality of New Orleans *vs.* McDonough (1842) 2.
Robinson (La. R.) 244.
Eddy *vs.* Shreveport, 26 La. An. (1874) 636.

It is clearly a mistake to say that the power of the city to purchase real property is limited to the purposes and the quantities designated by section 10, *supra,* of the charter, which provides that the council shall have the power "to order and direct ditching, filling, opening, widening and continuing any streets; and if, for such purpose, the land of any private person or body corporate is necessary to be had, the said council shall have the right and power of purchasing the same at a reasonable price, or cause the same to be appropriated according to the manner and formalities prescribed by existing laws upon the subject." No such limitation was contemplated by the legislature — and herein we think the learned judge who tried the cause was misled. It was entirely unnecessary to insert this authority to purchase in section 10, and we cannot conceive of any reason for it, except to point out to the city specifically the methods to be pursued by it in obtaining property to make and improve its streets.

A reference to section 17, *supra,* of the charter shows conclusively that the power of the city to purchase real property was not to be limited by section 10; for power is there given to construct a city hall, markets, and other structures of public necessity and utility, and no power is there given to purchase or lease land upon which to construct them; and certainly no one will be so technical as to contend that they were to be erected upon the streets, or only to be built at all, except upon the condition that some one would provide the land upon which to place them; and section 21 would have been unnecessary if the only power to hold land had been conferred by section 10. It is perfectly clear that the power of Shreveport to purchase land was not intended to be, and is not, limited to the authority conferred by section 10, nor for the uses and purposes designated by section 17, and that section 2 gives unlimited power to purchase land not only for the uses and purposes contemplated by sections 10 and 17, *supra,* but generally, for any purpose within the discretion of the city council, and if section 2 did not exist, section 21 would give this authority. And a reference to the cases of *New Orleans* v. *McDonough,* 2 Robinson, and *Eddy* v. *Shreveport,* 26 La. An., confirms this theory. And that this discretion of the city council extended even to a donation to the Texas & Pacific Railroad Company, a foreign corporation, is decided in *Eddy* v. *Shreveport,* where the question as to the power of this city was put directly in issue by the denial of the right of the city to execute its notes and mortgage for the balance of the purchase money not obtained by the negotiation of the bonds here in suit, and the railroad company was a party to the suit.

The opinion of the court below (Record, p. 25) shows that sections 2 and 21 of the charter and the decisions of the Supreme Court of the state were not called to its attention nor considered by it, and to this may be attributed the misconception by the court of the full scope of the charter and the powers of the city under it.

II.

We think we have shown that the city had authority to purchase this land under sections 2 and 21 of the charter, and the question then arises, had it authority to issue negotiable bonds to raise money with which to pay for the same or a part payment thereon? It is clear that the power of the city to raise money with which to pay debts is not limited to taxation, even if that power can be said to be given for such purpose at all. It is equally clear that the power of taxation is nowhere expressly given to raise money with which to pay for land, although it is given for other and general corporate purposes incidental to every municipal corporation. Then, here is power in a municipal corporation to purchase land and to incur indebtedness therefor, and no method for its payment provided, and in a state whose general policy has been to allow such corporations unlimited power to purchase land, and on credit, and even to secure the purchase money by note and mortgage. This corporation has construed its authority and issued its negotiable bonds with which to raise money to pay for the land, and received the money thereon, and, it is to be presumed, applied it in payment of the debt.

Did it have the power to issue the bonds? Where a corporation is authorized to do any act, and no mode is pointed out for its exercise, it may adopt any which in its judgment will best secure the purpose contemplated:

So. Life Ins. and T. Co. *vs.* Lanier, 5 Fla., 110.
Galena *vs.* Corwith, 48 Ill., 423.
State Board *vs.* C. S. Ry. Co., 47 Ind., 407.

II *a.*

The power in a municipal corporation to purchase carries with it power to incur indebtedness for the purchase money, and to issue its negotiable obligations promising to pay the indebtedness at a future day:

The People *vs.* Brennan, 39 Barb., 522–45.
1 Dillon on Municipal Corporations, 3d ed., § 118, p. 144.
Daniel on Negotiable Instruments, vol. 2, p. 461.
Mills *vs.* Gleason, 11 Wis., 470.
Bank *vs.* Chillicothe, 7 Ohio, Part 2, p. 31.
State *ex rel.* Dean *vs.* Madison, 7 Wis., 688.
Clark *vs.* School District, 3 R. I., 199.
Ketchum *vs.* Buffalo, 14 N. Y., 356.

Holding that municipal corporations generally have the power to issue bonds and notes without express authority. See, also:

Commonwealth *vs.* Pittsburg, 41 Pa. St., 278.
Douglas *vs.* Virginia City, 5 Nevada, 147
Moss *vs.* Harpeth Academy, 7 Heisk, 283.
Adams *vs.* Memphis, etc., R. R., 2 Cold., 645.
The Evansville, etc., R. R. Co. *vs.* Evansville, 15 Ind., 395.
Galena *vs.* Corwith, 48 Ill., 423.
Miller *vs.* The Board, 66 Ind., 162.

II *b.*

The authority to purchase land is not one of the powers incidental to municipal corporations generally, and the strict rule which would limit the powers of a corporation to the performance of such acts and the execution of such duties as could be accomplished by the revenue to be derived from the usual power of taxation will not apply. And this is more especially true of cities than of counties, townships, and other *quasi* political subdivisions of the state.

Where the power of taxation is given to a municipal corporation with which to accomplish the ordinary and usual objects of its organization or for specified purposes, and no other express power is given to raise money, it may be best to construe its powers strictly, although the weight of authority is opposed to such a limitation:

Mills *vs.* Gleason, 11 Wis., 470.
New England, etc., Co. *vs.* Robinson, 25 Ind., 536.
Board, etc., *vs.* Day, 19 Ind., 450.
2d, etc., Bank *vs.* Danville, 60 Ind., 504.
Lynde *vs.* The Co., 16 Wallace, 6.
Sheffield Township *vs.* Andress, 56 Ind., 157.
Kelly *vs.* Brooklyn, 4 Hill (N. Y.), 263.
Galena *vs.* Corwith, 48 Ill., 423
Tucker *vs.* Raleigh, 75 N. C., 267.
Ketchum *vs.* Buffalo, 14 N. Y., 356.
Sturtevants *vs.* Alton, 3 McClain, 393.
Austin *vs.* Dist. Tp. of Colony 51 Iowa, 102.

II *c.*

And where the power of taxation is given merely as an incident to enable the corporation to carry out the usual purposes of its organization, and it is authorized to do other and independent things which require the use of money, and especially if in large and unusual sums, such as the purchase of property and the construction of buildings, the weight of authority is that they may, where it is not expressly prohibited, borrow the money and give notes, bonds, and other usual evidences of indebtedness therefor, as incidental and necessarily implied from the express power given:

Williamsport *vs.* Commonwealth, 84 Pa. St., 487.
Mills *vs.* Gleason, 11 Wis., 470.
Bank *vs.* Chillicothe, 7 Ohio, Part 2, p. 31.
Board *vs.* Day, 19 Ind., 450.
Miller *vs.* Board, 66 Ind., 162.
New Albany *vs.* Danville, 60 Ind., 504.
Gause *vs.* The City of Clarksville, 5 Dillon, 165-181.
Lynde *vs.* The Co., 16 Wallace, 6.
Police Jury *vs.* Britton, 15 Wallace, 566-572.
Eddy *vs.* Shreveport, 26 La. An., 636.

And that is true almost without exception where the notes and bonds are issued to raise funds for an indebtedness already created, as in the case before the court:

Clark *vs.* School District, 3 R. I., 199.
Austin *vs.* Colony, 51 Iowa, 102.
Williamsport *vs.* Commonwealth, 84 Pa. St., 487.
1st Municipality N. O., *vs.* McDonough, 2 Rob. (La.), 242.
Barry *vs.* Merchants Exchange Co., 1 Sandf. ch. 280.

Curtis *vs.* Leavitt, 15 N. Y., 9–62.
Smith *vs.* Law, 21 N. Y., 296–299.
Bank *vs.* Chillicothe, 7 Ohio, Part 2, p. 31.
Ketchum *vs.* Buffalo, 14 N. Y., 356.
Douglass *vs.* Virginia City, 5 Nevada, 147.

II *d.*

The fact that the power of taxation is given does not preclude the idea that a greater indebtedness than can be paid by the taxes authorized to be levied, can be incurred, or preclude the incurring of any indebtedness :

Robbins *vs.* School District, 10 Minn., 340–345.
Mills *vs.* Gleason, 11 Wis., 470.
Clark *vs.* School District, 3 R. I., 199.
Lynde *vs.* The Co., 16 Wallace, 12.
Austin *vs.* Dist. Tp. of Colony, 51 Iowa, 102.
Emmerson *vs.* Blairsville, 4 Pittsb. R., 39.

II *e.*

Power to borrow money is almost universally conceded to carry, by implication, authority to a municipal corporation to issue bonds and other securities :

Commonwealth *vs.* Pittsburg, 34 Pa. St., 495
R. R. Co. *vs.* Evansville, 15 Ind., 395.
Middletown *vs.* Allegheny Co., 37 Pa. St., 241.
Reinboth *vs.* Pittsburg, 41 Pa. St., 278.
Seybert *vs.* Pittsburg, 1 Wallace, 272.
Rogers *vs.* Burlington, 3 Wallace, 654.
De Voss *vs.* Richmond, 18 Gratt. (Va.) 338.
Galena *vs.* Corwith, 48 Ill., 423.
Williamsport *vs.* Commonwealth, 84 Pa. St., 487.
Kelly *vs.* Mayor, 4 Hill, 265.
Police Jury *vs.* Britton, 15 Wallace, 572.
Milner's Admrs. *vs.* Pensacola, 2 Woods, 637.
Mayor *vs.* Inman, 57 Ga., 370.
Tucker *vs.* Randolph, 75 N. C., 267.
Mercer Co. *vs.* Hacket, 1 Wallace, 95.
Meyer *vs.* Muscatine, 1 Wallace, 384.
Lynde *vs.* The County, 16 Wallace, 6.

And power to incur indebtedness gives authority to borrow money to pay it :

Austin *vs.* Dist. Tp. of Colony, 51 Iowa, 102, 41 Pa. St., and 48 Ill.; and many others cited above.

II *f.*

In arriving at a conclusion as to the authority of a municipal corporation to purchase property, become indebted, and issue bonds, we must look to the constitution and laws of the state for any prohibition against the exercise of such power. If none, we then look to the charter, if a city; and if not, to the general legislation of the state, for exprsss authority. If there is none, as a final resort we examine to see if the authority is to be implied from the express powers given; and, in arriving at a conclusion upon this point, we must consider the general legislation of the state upon the subject and the interpretation of their powers thereunder by the highest judicial authority of the state. *1 Dillon on Municipal Corporations, 3d ed., sections 124; and 125 subs. 3 and 4 and notes.* No definite and fixed rule can be laid down that will be applicable to all cases, all classes of municipal corporations, and from all the states; and it must be conceded that the rule is in all states less strict in reference to cities than the other classes of municipal corporations, if, indeed, the same rule can be said to be at all applicable.

Apply this rule to the case before the court. There is no constitutional or legislative prohibition against the purchase of the property, incurring the indebtedness or issue of the bonds. There is express authority in the charter for the purchase of the property, but there is no provision made for its payment. There is even no authority to use the power of taxation, for that purpose. There is no express and direct authority given for the issue of these bonds; but the city has purchased this property, which it was authorized to do, and created an indebtedness for it and issued these bonds to enable it to raise the purchase money, or a part of it. The money is thus raised and applied by the city to that purpose (as appears by the answer, Record, p. 8, and agreed facts, p. 13, secs. 14 and 16). In this state of the legislation upon the subject, the Supreme Court construes the will of the legislature and says, it is to sanction the purchase of land — for the purpose of donation, or even speculation — to do so on credit; and the issue of notes and mortgages upon which to raise money to pay it:

1st Municipality N. O. *vs.* McDonough, 2 Robinson (L. R.), 244.
Eddy *vs.* The City of Shreveport, 26 La. An., 636.

The first of these cases in 1842; and the latter in 1874, construing the identical purchase and debt now under consideration. The doctrine announced in 2 Robinson is affirmed in *The Bank* v. *The Navigation Co.*, 3 La. An., 294–312 (1848).

II *g*.

The Supreme Court has since denied the right of the city of Shreveport to purchase *gas stock* and issue bonds therefor. *Wilson* v. *Shreveport*, 29 La. An., 673, decided in 1877. But that is not an authority against the right we now claim; and, if it should be argued that it were, will not be followed by this court in this case, for the reason that at the time of the purchase of this land, and of the issue of these bonds, and of their being put in circulation, and the money realized upon them, and the rights of property vested thereunder, the decisions of that court were in favor of the exercise of the power assumed by the city, and will be followed by this court:

Gelpcke *vs.* Dubuque, 1 Wallace, 175–216.
Olcott *vs.* Supervisors, 16 Wallace, 678.
Pine Grove *vs.* Talcott, 19 Wallace, 666.
The City *vs.* Lamson, 9 Wallace, 477.
San Antonio *vs.* Mahaffey, 96 U. S., 312.
Schuyler Co. *vs.* Thomas, 98 U. S., 169.
Roberts *vs.* Bolles, 101 U. S., 119.
Douglass *vs.* The County of Pike, 101 U. S., 667.
Thompson *vs.* Perrine, 103 U. S., 806.
Taylor *vs.* Ypsilanti, 105 U. S., 60.

III.

But, it is said in the answer, there was no valid ordinance, because payment of the debt was not adequately provided for; under a general law of the state, which requires municipal corporations creating a debt, in the same ordinance or resolution to provide for its payment. See *Young* v. *Police Jury*, 32 La. An., 392. Section

17, *supra*, of the charter contains substantially the same requirement. It is admitted that the ordinance under which the bonds were issued provided for the levy of a tax to pay interest and create a sinking fund for redemption of the bonds (agreed facts, section 2, Record, p. 12); and the bonds recite such levy (Record, p. 3), which is all the provision for payment that could have been contemplated, and is sufficient.

Besides, the recital in the bonds and the matters and things referred to below, estop the city from setting up any such defence.

III *a*.

The answer also contends that the ordinance is invalid because not passed in compliance with section 20, *supra*, of the charter, which provides that no ordinance providing for the purchase of real estate shall be passed except by a majority of the council, nor shall a final vote on the same be taken except at a regular meeting subsequent to a previous regular meeting at which the same shall have been introduced and passed to its second reading, the agreed facts (sec. 2, Record, p. 12) admitting that the ordinance was introduced and passed June 26th, 1872.

This point might be well taken if this were an application for a writ of *mandamus* to compel the issue, or an injunction to restrain it, but it can have no force in this proceeding. This is an action by a *bona fide* holder of the bonds and coupons to recover upon some of the overdue coupons — and the rule is reversed:

Woodhull *vs.* Beaver Co., 3 Wallace Jr., 274.
State Board *vs.* C. S. Ry. Co., 47 Ind., 407.
See, also, Hitchcock *vs.* Galveston, 96 U. S., 341-351.

If improper, it was committed by the officers of the corporation, and it is estopped from setting it up:

East Lincoln *vs.* Davenport, 94 U. S., 801.
Supervisors *vs.* Galbraith, 99 U. S., 214.

This is, at most, a mere irregularity in the execution of a power committed by the officers of the corporation of which the city is now estopped from taking advantage:

1st. By having ratified the acts of said officials by said vote; by the issue of the bonds; by purchase and donation of the property; by paying for the property; by payment of interest on the bonds; and by the other matters and things done by the officers and agents of said city hereinbefore set out:

Supervisors *vs.* Schenck, 5 Wallace, 772.
Society for Savings *vs.* City of New London, 29 Conn., 174.
Keithsburg *vs.* Frick, 34 Ill., 405.
Pendleton Co. *vs.* Amy, 13 Wallace, 297.
Bissell *vs.* Jeffersonville, 24 Howard, 287.
Portsmouth Savings Bank *vs.* Springfield, 4 Federal Reporter, 276.
Woodhull *vs.* Beaver Co., 3 Wallace Jr., 274.

2d. By the recital in the bonds that they are issued in obedience to an ordinance of the Mayor and administrators of said city, adopted on the 26th day of June, 1872. The law will presume in favor of a *bona fide* holder that the ordinance was adopted as required by the charter. There is nothing on the face of the bonds to indicate that the ordinance was not properly adopted, and the city is now estopped from showing that it was not:

Humbolt *vs.* Long, 92 U. S., 642.
Lewis *vs.* Commissioners, 105 U. S., 739.
Marcey *vs.* Warren, 97 U. S., 96.
And other cases generally, on estoppel.

We think we have shown above that the errors assigned are well taken, and that the plaintiff ought to have been awarded judgment; but, upon the theory that it is not safe to assume anything, we shall now endeavor to satisfy the court that the court below was mistaken in its interpretation of the charter, irrespective of sections 2 and 21.

IV.

Section 17, *supra*, of the charter provides that the city council may, when it deems it to the public interest, by ordinance, provide for the construction of a city hall, markets, and *other structures of public necessity and utility*, the cost of which shall be paid by the city; and further provides that when the cost of erecting said structures exceeds the amount of funds in the treasury, the council are authorized to issue forty-year ten per cent semi-annual interest bonds, and dispose of them as they deem best; and, also, that said council shall provide for levying a tax to pay the principal and interest of said bonds.

Here is authority to erect structures, and none to buy or otherwise secure the ground on which to place the same. Section 10 does not give that authority, for the sole power there is specific — to buy land for the street purposes there named; and if the authority is conferred at all, it is by the general power in sections 2 and 21, or by implication, necessarily, from the express power given. We have discussed its powers under sections 2 and 21, and shall now leave section 2 out of consideration. That the power to purchase land would arise by necessary implication from the authority to erect a building is too plain to be even denied; and if it would thus arise, the land could be paid for in the same manner and by the same means, because they are virtually one and the same thing — the two acts essential to produce the one result — the one useless without the other. The intent of the legislature was that the city might erect these structures, and if it did not have the land, by necessary implication, it could buy it, and what is implied has same effect as what is expressed:

The United States *vs.* Babbitt, 1 Black, 55.
Meyer *vs.* Muscatine, 1 Wallace, 384-393.

And section 21 recognizes such right to be in the city. But, the city says, *depot buildings and machine shops* are not *other structures of public necessity and utility* contemplated by said charter. Our answer to that is, that the bonds recite that they are issued in aid of the Texas & Pacific Railroad. A railroad is an object of public necessity and utility — it is for a public purpose:

Gelpcke *vs.* Dubuque, 1 Wallace, 175-220.
Meyer *vs.* Mucatine, 1 Wallace, 384.
Rogers *vs.* Burlington, 3 Wallace, 654.
Mitchell *vs.* Burlington, 4 Wallace, 270.
Larned *vs.* Burlington, 4 Wallace, 275.

In the Dubuque and Burlington cases (1 and 3 Wallace), the charters are the same. Section 13 gives authority to establish fire departments, wharves, docks, etc, and section 25 to open, pave, and improve streets, etc., markets, space, or public landings, and to levy and collect taxes therefor. These are the objects of a public nature authorized to be done. Section 27 then follows, providing that whenever, in the opinion of the city council, it is expedient to *borrow money* for any *public purpose*, the question shall be submitted to the citizens, and the loan shall not be made unless two-thirds of the votes polled shall be given in the affirmative. (For the charter of Burlington, see Laws of Iowa Territory, 1845, p. 74, and Dubuque, Laws 1846, p. 114.)

There is no other authority given to borrow money, and none to issue bonds. Upon an application to compel or restrain the issue of bonds under this charter, the city might have been limited in its power to borrow money for the public purposes named and others of a like nature, and prohibited from issuing bonds; but when the authorities had placed their interpretation upon the charter, subscribed to the stock of a railroad company, and paid for the same in its negotiable bonds, which were in the hands of a *bona fide* purchaser, for value, it was then too late to object that they did not possess the authority. They were then in no position to insist upon a strict interpretation of their powers under said charter. In the Burlington cases (4 Wallace) the same rule was applied to bonds issued for plank road purposes. In the Muscatine case the charter contained substantially the same general provisions as above, and section 15 provided that the city might *borrow money for any object in its discretion*, provided two-thirds of its citizens voting at an election favored the loan. Its *discretion* might have been limited to the objects incidental to its organization and as set forth in its charter; but it subscribed to the stock of a railroad company and paid for it in its bonds, and after they were in the hands of a *bona fide* holder, the city was held to be bound, as such a purpose was a public one, and might reasonably be held to be within its discretion.

Compare these provisions of said charters with that now before the court:

SECTION 17. The city council may provide for paving, opening, or widening of any street, the construction of a city hall, markets, and *other structures of public necessity and utility*, the cost of which shall be paid by the city; and, when the cost exceeds the funds in the treasury, the council are authorized to issue bonds [such as have been issued in this case], and dispose of them as they may deem for the best interests of the city.

This case is stronger for the bondholder than either of those cases, in that this charter actually authorized the issue of the bonds and the disposition made of them that was made. The only question left open is, as to whether a railroad is a structure of public necessity and utility. That it is such, ordinarily, has been decided too often to need repeating; and that it is included as such under legislative provisions similar to the above, is decided in the cases *supra*, and there is nothing in the decisions of the Supreme Court of Louisiana to cause this court to reconsider its own rulings.

IV *a.*

It can make no difference that the bonds were issued to raise funds to pay for the land upon which the railroad should permanently locate its depot and machine shops, and not issued direct to the railroad company. There was, perhaps, more benefit to be derived from it for the city by the method adopted; and was within the legitimate discretion of the city council authorized by the charter.

Even if this were not so, the bonds recite their issue in aid of the Texas & Pacific Railroad — a lawful purpose, as we have shown — and the city is now estopped from showing that they were not issued for that purpose or that they were issued for an unlawful purpose:

Hacket *vs.* Ottawa, 99 U. S., 86.
Ottawa *vs.* National Bank, 105 U. S., 342.

IV *b.*

It is also immaterial that the Texas & Pacific Railroad Company is not a Louisiana corporation. The recital in the bonds convey no notice of any such fact, and there is nothing to show that the plaintiff did know it; and the city is estopped from making such defense.

And aside from that, there is no prohibition against such aid to a foreign corporation. The city gets identically the same benefits it would from a local company — and the *benefit* is what is sought to be secured. The result was the same to it as if the railroad company had been a Louisiana company, and the same rule of law applies as though it had been:

> Otoe Co. *vs.* The Railroad Co., 16 Wallace, 667.
> Walker *vs.* Cincinnati, 21 Ohio St., 14.
> Sharpless *vs.* The Mayor, 21 Pa., 147.
> Q., M. & P. R. R. Co. *vs.* Morris, 84 Ill., 410, and cases on p. 419.

IV *c.*

If it should be conceded that a literal and strict interpretation of said charter would not authorize the issue of these bonds, they would still not be invalid, because the city council has placed its own construction upon said charter, issued the bonds, received and retained the proceeds. And this interpretation and these acts have been ratified and approved by the voters of the city, by the council in its official capacity, and by the departments thereof, taxes levied and collected and interest paid, and the opinion of its attorney taken that its acts and proceedings were legal, the faith and property of the corporation pledged for the payment of the bonds and interest, and every other act and thing in its power done to inspire confidence and procure the sale of its said bonds.

The said charter, in the light of the decisions of the Supreme Court of Louisiana and of this court, will bear the interpretation placed upon it by said city, and it is now too late for it to say that it was mistaken — it is bound by what it has done.

Van Hostrup v. *Madison*, 1 Wallace, 291–297, where the authority was to issue bonds to any *chartered company for making a railroad to the city of Madison.* The city issued bonds to a railroad which did not run to the city, but connected with a road that did run to it. The bonds recite their issue to said first road; stock was received and held.

The court said, per Nelson, Judge: Our conclusion is, that full power existed for the issue of the bonds. Even if the case had been doubtful, inasmuch as the city authorities have given this construction to the charter, and the bonds have been issued and are in the hands of *bona fide* purchasers for value, we should have felt bound to acquiesce in it.

Meyer v. *Muscatine*, 1 Wallace, 384–391, where the bonds and coupons were made payable in New York, for which there was no authority expressed. The court said, per SWAYNE, Judge: The principal power, when expressed, draws to it, by implication, the means for its execution — no legal principle forbids it. If the subject admitted of doubt, we should hold that the city, having acted on its own construction and drawn in others to take the securities and advance their money upon it, is now concluded from denying that construction to be the true one.

James v. *Milwaukee*, 16 Wallace, 159–162, where the authority was to issue bonds to certain railroads, and " to *any other* railroad company *duly incorporated and organized*." The city issued bonds to a railroad company incorporated after the passage and approval of that act. The court said, per SWAYNE, Judge, that said road came within the terms of that act; and that the construction practically given by the parties interested, as evidenced by their conduct, is in harmony with the views we have expressed, and is not without weight.

Woodhull v. *Beaver Co.*, 3 Wallace, Jr., 274–278, where the county was authorized to subscribe, provided the amount did not exceed $100,000 — the amount to be fixed by the grand jury, and, upon their report being filed, the commissioners were to subscribe, the bonds to be sold at not less than par. The grand jury did not fix the amount, but directed the commissioners to subscribe in conformity to the act. The commissioners issued bonds (the amount not stated) and gave them to the railroad company, who sold them below par. The court said, per GRIER, Judge: " In the hands of a *bona fide* holder the bonds are valid; that the act is capable of the construction given it; that now, when the parties have given their construction to the act, and it can, by its terms, be made to include the power, the court will not exercise astusia to give it a stringent interpretation in order to enable a county to disown its obligations after having received their value."

Scanlon v. *Childs*, 33 Wisconsin, 663, where the defendant had a license from the United States to make and sell liquors, but none from the city of Janesville, where he lived. There was no prohibition against the manufacture of such liquors. (The excise law required a license for the sale of liquors by those who made a business of vending at wholesale or retail, by those who bought for that purpose to carry on a business.) The defendant manufactured and sold at wholesale only, in casks and barrels as put up by him. The court held, per DIXON, C. J., that the general understanding of a law, and constant practice under it for so long a period (twenty years) by all officers of the government, whose duty it has been to execute it, unquestioned by any suit brought or public or private action instituted to test or settle the construction in the courts, ought to be very strong, if not conclusive, evidence of its true meaning and application, and that they are such as it has thus received.

Luling v. *Racine*, 1 Bissell, 314, where the act passed February 10th, 1853, to take effect immediately, authorized Racine to issue bonds to the R. & M. Railroad Company. The bonds were issued in March and May, 1853, and due February 10th, 1873. The act was published as a *private* act in October, 1853. It authorized the bonds to run twenty years. The stock was issued, and commissioners elected to represent it. The constitution provided that no *public* act should take effect until published — and all laws should be published as speedily as possible. To a suit on the bonds the defense was set up that the bonds did not run twenty years; that the act was a public act, and not published until October, 1853, long after the bonds were issued. The court held, per MILLER, Judge, that, as a private act, the people and authorities of Racine accepted it. As such, the city council unanimously authorized the bonds to be issued in pursuance of its authority, and the Mayor and City Clerk issued them under the corporate seal. Even if the act should be considered by the court to be a general law in the sense of the constitution, affecting the whole people of the state, and which should have been published before going into effect, contrary to the legislative declaration and intention, yet the contract was entered into by the city with this plaintiff under a law acknowledged by all parties to be valid at the time this plaintiff parted with his money, etc., and the court, cannot, by a technical construction of the act, release the city from the payment of a just debt. Under the authority of the act the city issued the bonds, and on the faith of it the plaintiff purchased them, and the court will not allow a supposed technicality to defeat the recovery of a debt thus honestly contracted. The city authorities put their own construction upon the act, and carried it out by issuing the bonds as they did, and approved their acts by paying the annual interest on the bonds for several years after the publication of the act, and receiving certificates of stock of the railroad company as consideration for the bonds. The people approved all this by electing commissioners to represent the stock. I think they should not be permitted to object to the validity of their own acts.

Portsmouth Savings Bank v. *Springfield*, 4 Federal Reporter, 276, decided in November, 1880. The court, per DRUMMOND, Judge, said: " All questions of doubt in relation to the validity of these bonds should be answered in favor of their legality, because the city has recognized their validity repeatedly and has paid the interest on them for a series of years. Therefore, under such circumstances as these, it should appear beyond a reasonable doubt that the issue of the bonds was void; that the construction placed upon the act was not a violent or forced one, and the city was bound by it. In this case the bonds were authorized to be issued by the city and county jointly, and the city alone issued."

Memphis v. *Brown*, 1 Flippin, 188–193, where the city was sued on certain contracts made for paving its streets, and, after about $500,000 of work had been done, changed the contract so as to try and release the city from payment for street intersections, and loaned Brown & Co. first $100,000, and afterwards $175,000 of bonds, upon certain conditions. The city now claimed that the lot-owners were to be assessed for the entire work, although the contract had been made and work done to the extent named upon a different theory. The court said, per EMMONS, Judge (p. 193): "This is the practical construction given their own power by the officers and agents of the city. The rule is well settled, as it is fair and honest, that when parties have acted in good faith upon a given interpretation of a charter, and the party who has received a benefit under it attempts to escape just responsibility by denying the authority, the court will, if possible, sustain the interpretation they both have given to it."

Hitchcock v. *Galveston*, 96 U. S., 341–351, where the city made a contract for paving its streets at an expense beyond what the taxes authorized would pay — a part of said expense to be paid in bonds. After a part of the work had been done the city repudiated the contract, and Hitchcock sued for damages. The city set up its want of authority. The court, per STRONG, Judge, on p. 351, said: "There may be a difference between the case of an engagement made by a corporation to do an act expressly prohibited by its charter or some other law, and a case of where legislative power to do the act has not been granted. Such a distinction is asserted in some decisions. But the present is not a case in which the issue of the bonds was prohibited by any statute. At most, the issue was unauthorized. At most, there was a defect of power. The promise to give bonds to the plaintiffs in payment of what they undertook to do was, therefore, at farthest, only *ultra vires;* and in such a case, though a specific performance of an engagement to do a thing transgressive of its corporate power may not be enforced, the corporation can be held liable on its contract. Having received benefits at the expense of the other contracting party, it cannot object that it was not empowered to perform what it promised in return, in the mode in which it promised to perform."

To the same effect, seee :

Bridgeport *vs.* H. R. R. Co. 15 Conn. 475.
Clark *vs.* Mowyer, 5 Mich., 462–467.
Peterson *vs.* The Mayor, 17 N. Y., 453.
Pine Grove *vs.* Talcot, 19 Wallace, 666–678.
Gas Company *vs.* San Francisco, 9 Cal., 453–469.
Adams *vs.* Lawrence Co., 4 Pitts. R., 64.
S. L. I. & S. Co. *vs.* Lanier, 5 Fla., 110.
State Board *vs.* C. S. Ry. Co., 47 Ind., 407.
Argenti *vs.* San Francisco, 16 Cal., 256.
Allegheny *vs.* McClurkin, 14 Pa. St., 81.
Maher *vs.* Chicago, 38 Ill., 266.

V.

We are aware this court has decided that, in grants by the legislature, only such powers can be exercised as are clearly comprehended in express words, or derived therefrom by necessary implication; regard being had to the grant, any ambiguity or doubt must be resolved in favor of the public.

Minturn v. *Larue*, 23 Howard, 435, where it was held that a city could not grant exclusive ferry privileges; and in *Mills* v. *St. Clair Co.*, 16 Peters, 524, the court said: The rule of construction is, that if the meaning of the words be doubtful, they shall be most strongly taken against the grantee and for the government, and should not be extended, by implication, beyond the natural and obvious meaning of the words; and in *South Ottawa* v. *Perkins*, 94 U. S., 260, this court said: " Municipal corporations cannot issue bonds in aid of extraneous objects without legislative authority, of which all persons dealing with such bonds must take notice at their peril; and in *East Oakland* v. *Skinner*, 94 U. S., 255, the court said, where there is total want of authority to issue bonds there cannot be a *bona fide* holder; and in *Marsh* v. *Fulton County*, 10 Wallace, 676, it was said, ratification and recognition cannot supply the want of authority. The power must exist in order to make a ratification effectual."

But there is nothing in these decisions militating against our position in this case. Neither of those cases hold that the authority cannot exist by implication; on the contrary, those touching that point admit that it can. We do not claim that a ratification will make a bond good where there is a total want of authority, it is not necessary to go that far in this case; but that where the authority is in doubt owing to the ambiguity, uncertainty, or insufficiency of the language used, or where something is authorized and much left to inference, to be implied, and similar cases, then a ratification and recognition becomes effectual.

The strict interpretation announced in 23 Howard and 16 Peters, *supra*, is no doubt the correct rule, applicable to the cases before the court, and would be in case of municipal bonds if the action was before the issue and negotiation of the bonds. After that, the rule there announced is reversed. To this effect, see *Woodhull* v. *Beaver County*, 3 Wallace, Jr., 274; *State Board* v. *C. S. Ry. Co.* 47 Ind., 407, and others, *supra* — a rule always acted upon by this court, and never, that we are aware of, denied.

We think we have shown that the judgment of the court below was wrong upon two theories:

First. That the purchase of the land was authorized by sections 2 and 21, an indebtedness permitted without any provision for its payment; therefore, under the decisions of the Supreme Court of Louisiana, then in force, the issue of the bonds was clearly authorized by implication.

Second. That under section 17, coupled with the acts and proceedings of the city council, its officers and agents, construing the same and acting thereon, a railroad is such structure of public necessity and utility there contemplated, and, if so, the bonds are there authorized.

Hence, the errors assigned should be sustained and an order entered directing the court below to give judgment on the facts found for the plaintiff, which we respectfully ask the court be done.

JAMES GRANT,
WHIT. M. GRANT,
For Plaintiff in Error.

108-282

MAR 10 1883
JAMES H. McKENNEY

SUPREME COURT OF THE UNITED STATES.

No. 230.

CHARLES EDWARD LEWIS,
Plaintiff in Error,

vs.

THE CITY OF SHREVEPORT, IN LOUISIANA,
Defendant in Error.

In error to the Circuit Court of the United States for the District of Louisiana.

Argument of B. F. Jonas for Deft. in Error.

R. O. POLKINHORN, PRINTER, WASHINGTON, D. C.

SUPREME COURT OF THE UNITED STATES.

No. 230.

CHARLES EDWARD LEWIS,
Plaintiff in Error,
vs.
THE CITY OF SHREVEPORT, IN LOUISIANA,
Defendant in Error.

In error to the Circuit Court of the United States for the District of Louisiana.

Argument of B. F. Jonas for Deft. in Error.

STATEMENT OF CASE.

The following is the statement of facts, as agreed upon and found by the Court (see Record, pp. 25–27 ; also 31.)

The suit was brought to recover the amount of certain overdue interest-coupons belonging to ninety negotiable bonds for one thousand dollars each, issued by the defendant.

The parties waived the intervention of a jury ; and having agreed upon the facts, submitted the case to the court upon the law arising on the agreed facts.

It appeared from the agreement of the parties that on April 27, 1871, an act was passed by the legislature of Louisiana " to incorporate the city of Shreveport, to define its limits, and provide for its better police and municipal government."

This act constituted the charter of the city at the time the bonds in question were issued and sold. Section 3 of the charter provided that the government of the city of Shreveport and the administration of its affairs should be vested in a mayor and four administrators, who should form its council.

Section 10 declared "the council shall have full authority to make and pass such by-laws and ordinances as are necessary and proper, * * * to regulate and make improvements to the streets, public squares, &c., and if for such purpose the land of any private person or body corporate is necessary to be had, the said city council shall have the right and power of purchasing the same at a reasonable price, or cause the same to be expropriated," &c.

Section 17 declared "the council may, when it deems it for the public interest, provide by ordinance for the paving, opening, or widening of any street or streets, or the construction of a city hall, markets, and other structures of public necessity and utility, the cost of which shall be paid by the city; provided that whenever the amount or costs of paving said streets, or erecting the structures aforesaid, from time to time, exceeds the amount of funds in the city treasury, then the council are hereby authorized to issue bonds of the city running forty years, with interest-coupons attached, and bearing interest at the rate of and not exceeding ten per cent. per annum, payable semi-annually, * * * and the said council shall have power to dispose of said lands in such manner as they may deem for the best interest of the city, the proceeds of which shall be used solely for the purpose for which they shall be issued."

Section 20 declared "no ordinance * * providing for the purchase or sale of real estate shall be passed except by a majority of the council," &c.

On June 26, 1872, the city council enacted an ordinance which provided for the purchase of certain real estate, to be donated to the Texas and Pacific Railroad Company, upon which the company was permanently to establish and maintain its depots and machine shops: which provided for the payment of the purchase price of said real estate by the issuing and sale of the bonds of the city to the amount of $260,000, payable forty years after date, with interest at eight per cent. per annum, payable semi-annually, and with interest-coupons attached; which provided for the levy of an annual tax to pay the principal and interest of the said bonds, and which provided that said ordinance should be submitted to a vote of the people of the city for their ratification and approval. This ordinance is the only one by virtue of which the bonds in question were issued and sold.

On July 1, 1872, the said ordinance was submitted to a vote of the people of the city, and seven hundred and five votes were cast for and three votes against its ratification and approval.

On July 1, 1872, in pursuance of the ordinance and vote aforesaid, and for the purposes named in the ordinance, the city issued its bonds for two hundred and sixty thousand dollars ($260,000).

On July 19, 1872, the city council passed an ordinance authorizing George Williamson, esq., who was appointed the agent of the city for that purpose, to sell said bonds at sixty cents on the dollar.

On July 23, 1872, the city council appropriated money to pay the cost of engraving said bonds and the expenses incurred by Williamson in his effort to sell them.

On October 31, 1872, the city attorney, as such officer, gave an opinion that the city had power to issue said bonds, and that the object for which said bonds was issued was of public utility, and clearly within the power conferred by the city charter.

On the same day the city council passed an ordinance whereby said Williamson was appointed special agent of the city to sell said bonds, and upon his failing to sell authorized him to execute the promissory note of the city for $130,000, and to pledge said bonds as security for the payment of the same, and to pledge the faith of the city to make good any arrangement entered into by him in the sale of said bonds or in raising money thereon. Williamson, as agent for the city, appointed one Jamison, of Philadelphia, to sell the bonds, and the city council, by ordinance, ratified the appointment.

On November 7, 1872, the city council passed an ordinance whereby Williamson was authorized to turn over to Thomas A. Scott, esq., $200,000 of said bonds upon his assuming the payment of the indebtedness incurred by the city in the purchase of said real estate to be donated to the Texas and Pacific Railroad Company.

The city council, on December 17, 1872, passed an ordinance levying a tax to pay the principal and interest of said $260,000 of bonds.

The city administrator of finance on March 1, 1873, made an official statement of the amount of the indebtedness of the city in which statement was included the said bonds, and on March 27, 1873, Williamson, as agent of the city, wrote to Jamison a letter, in which he stated that ample provision had been made by ordinance enacted by the city council for the payment of the principal and interest of the $260,000 of bonds.

On June 13, 1873, the city council passed an ordinance pledging the faith of the city to pay the said promissory note made by Williamson, as its agent, to secure the payment of which the said $260,000 of bonds had been hypothecated, and instructing the city administrator of finance to hold sacred for such purpose the tax levied by ordinance of December 17, 1872.

The official budget of the city, published on November 27, 1875, contained a statement of the indebtedness of the city on that day, in which was included the $90,000 of said bonds held and owned by the plaintiff, the same being the bonds to which the coupons sued on belong.

The plaintiff is a *bona fide* holder of the bonds to which the coupons sued on belong, and of said coupons, having purchased said bonds with the coupons attached in open market, paying therefor eighty-five cents on the dollar.

Both bonds and coupons are negotiable in form, being payable to bearer.

The Texas and Pacific Railroad Company has never been chartered by the State of Louisiana, but held a lease from the Vicksburg, Shreveport, and Texas Railroad Company of the railroad between Shreveport and the Texas line, which lease is still in force.

The coupons sued on were produced by the counsel of the plaintiff and filed in evidence in the cause.

The charter of the City of Shreveport is in evidence. (p. 14 Record.

The defendant's answer (p. 6, Rec.) denies that the charter contained or gave any authority for the issue of the bonds sued upon, or that the city of Shreveport was otherwise authorized by law to issue the same.

Also avers that if the persons holding office as the municipal authorities of Shreveport did execute and issue the bonds and coupons sued on, their action in so doing was *ultra vires*, and absolutely without force and effect, and that said bonds and coupons are not, therefore, binding obligations of said city.

Defendant denies that the execution and issuance of said bonds was in pursuance of any ordinance passed by the municipal government of Shreveport, and ratified by the vote of the voters of said city on the 1st of July, 1872, or at any other time. They allege that the charter of said city provides as follows:

> "No ordinance levying a tax, making an appropriation over five hundred dollars, or providing for the purchase or sale of real estate shall be passed, except by a majority of the Council, nor shall a final vote on same be taken except at a regular meeting, at which the same shall have been introduced and passed to its second reading."

Respondent avers that the pretended ordinance under which it is claimed the bonds and coupons sued on were executed and issued, purports to be an ordinance making an appropriation, and providing for the purchase and alienation of real estate. That said ordinance was not introduced, read, or considered at any regular meeting of the Council of Shreveport, was never legally passed, and is therefore and always was absolutely without effect.

Respondents aver further that by the charter of the city and the laws of Louisiana, the municipal authorities are and were prohibited from issuing any bonds or creating any debt without providing adequately for the payment of same, which was not done with regard to bonds and coupons sued on, and those bonds and coupons therefore cannot be valid obligations of the city.

Respondents allege that there is nothing in the charter of Shreveport or in the laws of Louisiana authorizing the municipal authorities of Shreveport to submit the pretended ordinance to the legal voters of the city for ratification; that any attempted ratification of any such ordinance could have no legal effect, and that the voters of Shreveport could not possibly ratify so as to give effect to any pretended ordinance not legally passed or passed, in contravention of prohibiting laws, or such as the council had no right, power, or authority to enact.

Respondents deny that any ratification was ever made as is alleged in pl'ff's petition or that bonds and coupons sued on were issued in accordance with any ratification of any ordinance.

Respondents, further answering, allege that on or about the 25th June, 1872, the individuals composing then the city council of Shreveport, at the urgent instance and request of the Texas Pacific Railroad Company, an incorporation foreign to the State of Louisiana, and having therein no chartered rights or existence, were induced to consider the propriety of purchasing and donating to said company certain real estate in Shreveport described as follows: "All the property lying between Commerce street and the river, commencing at the line of Cotton street and extending down the river to what is known as the Silver Lake tract."

That said individuals, deluded by the promises and representations, concluded to purchase said property for the city and then donate same to said company, all of which the council had no right or authority to do, but persisting in attempting to carry out their improper and unlawful purpose, said individuals, without authority and in violation of law, assumed to pass, but only to its second reading and not finally, on the 26th June, 1872, a pretended ordinance, and further assuming to act under authority thereof, executed and issued bonds and coupons sued on with others of like nature, entered into contract by which they assumed to purchase property hereinbefore described, from Gregg & Ford, C. C. Edy, S. B. Steers, Redwood & Johnson and Steers & Carlton, who pretended to be owners of said property, and thereupon donate same to said railway company.

Now, respondents allege said property was then and is now extra commercium and could not be the consideration of any valid or legal contract, because it lies immediately along and constitutes the west bank of Red River, a navigable stream, is public property, free to the use of the public and is not therefore susceptible of private ownership or of being the object or consideration of any contract.

Respondents aver that said individuals, still illegally assuming to act as the city council, caused to be executed and signed two hundred and sixty forty-year bonds, each for sum of one thousand dollars, with coupons attached, purporting to be bonds of said city, and delivered same to George Williamson, instructing him to negotiate same, to borrow money thereon, to execute and sign note of city therefore, and to pledge said bonds as security, all of which they had no right, power, or authority to do.

> "That said Williamson on or about the 13th August, 1872, executed his note with Thos. A. Scott, president of said railway company as security for sum of $67,015.00, negotiated same through B. K. Jamison & Co, of Philadelphia, and delivered said 260 bonds to said Jamison & Co, all of which Williamson had no right, power, or authority to do. Respondents allege that a large amount, via., the sum of $60,000, has been paid on said notes, and that all of said bonds are nevertheless held against the city."

Respondents aver that plaintiff acquired said bonds through said Jamison & Co., and must be held to have knowledge of all the legal defects in the transfer thereof, and cannot be considered innocent and *bona fide* third holders. A jury was waived in writing and the cause submitted, on the pleadings and the agreed facts as stated above.

The court found the facts as they had been agreed upon, and as a conclusion of law, that the city of Shreveport was without lawful authority to issue said bonds and coupons, and that the same are null and void and not binding on defendant; and that "the holders are presumed to have had notice of the fact when they purchased them." Judgment was rendered for defendants.

The court is referred to the very able written opinion of the circuit judge. (pp. 27 to 31, Record.)

It is almost impossible to add anything to the forcible and conclusive reasons given by the learned judge in support of his judgment.

The plaintiff's claim is resisted on the ground that the City Council of the defendant was absolutely without authority to issue the bonds which constitute its basis.

From the first organization of the defendant as a corporation down to the enactment of the charter of 1871, its original charter was several times amended by act of the Legislature. The provisions of these several amended charters, when they do not conflict with the one under which the city is now governed, are still in force. Prior to the charter of 1871 the defendant had no authority to issue bonds for any purpose whatsoever. The Supreme Court of Louisiana has so decided in express terms.

Wilson vs. *City of Shreveport*, 29 Ann., 673.

The power to issue bonds for certain purposes was conferred by Section 17 of the charter of 1871, which reads as follows:

> "*Be it further enacted, etc.*, That the City Council may, whenever it shall deem it to the public interest, by ordinance provided for the paving, opening or widening of any street or streets, or any part thereof, or in the construction of a city hall, markets, and other structures of public necessity and utility, the cost of which shall be paid by the city; *provided*, that whenever the amount or cost of paving said street, or erecting the structures aforesaid, from time to time, exceeds the amount of funds in the city treasury, then the Common Council are hereby authorized and empowered to issue

> bonds of the city, running forty years, with interest coupons attached, and bearing interest at the rate of, and not exceeding ten per centum, payable semi-annually either at New Orleans, Shreveport or New York, at the option of the holder thereof, and said Council shall have power to dispose of such bonds in such manner as they may deem for the best interest of the city, the proceeds of which shall be solely for the purpose for which they shall be issued. They shall also by ordinance provide for levying a tax from time to time, in order to provide for the payment of the principal and interest of the said bonds; *provided*, that whenever the City Council of Shreveport desires to have any particular patented pavement for the purpose of paving or improving the streets of said city, then the council of said city are hereby authorized, by resolution or otherwise, to fix the price to be paid for such pavement, and to let the same under contract, to the licensee or assigns of such patent or improvement."
>
> Acts 1871, p. 224.

If the City Council had any power at all to issue the bonds, such power must be found expressly granted in the above section, or impliedly deducible from some provision contained in it. Judge Dillon says: "It is a general and independent proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: first, those granted in *express words;* second, those *necessarily or fairly implied in or incident* to the powers expressly granted; third, those *essential* to the declared objects and purposes of the corporation—not simply convenient, but indispensable."

Municipal Corporations, Sec. 55.

The particular works and structures, in the construction of which the City Council is empowered to issue bonds, are set forth in the above section of the charter with great clearness and minuteness. Unless the object for which the bonds in controversy were issued, can be held to be for the construction of "a structure of public necessity and utility," then they were clearly issued without legal authority.

It is plain that the intention of this section was to confer on the corporation the power to construct in this manner such public buildings, and to make such improvements as are generally needed by such bodies from time to time. It is plain that such structures only were meant as the city should own and possess, and should need in the administration of its municipal government, such as a city hall, market house, etc.

The legislature could never have intended to grant any power to issue bonds for the purpose of erecting buildings to be bestowed on other corporations, and to pass beyond the control of the city government. It should be borne in mind that these bonds were not issued for the erection of a public building at all. The money raised on them was turned over to the President of the Texas and Pacific Railroad Company, a foreign corporation, not chartered under the laws of Louisiana, owning no property within the State, and was used in the *purchase of real estate*, on which the said company was to erect a depot. The real estate and depot erected on it passed out of the control of the defendant. There is nothing to prevent the railroad company from disposing of them or diverting them from the original object of their purchase. Now, we contend that the City Council had no power to issue bonds to purchase real estate to be donated to a foreign corporation. Such power is not expressly granted, or implied in any express grant, or essential to the objects of this corporation. It may be "convenient" to have a railroad depot in Shreveport, but such a structure is not "indispensable" to the purposes of the corporation. The Courts construe these assumed powers strictly.

In the case of the ***Loan Association*** vs. ***Topeka***, 20 Wallace, 655, in which bonds had been issued by a corporation in aid of a manufacturing enterprise, the Supreme Court of the United States said: "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the inn keeper, the banker, the builder, the steamboat owner, are equally promoters of the public good, and equally deserving the *aid* of the citizens by forced contributions. No line can be drawn in favor of the manufacturer, which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town." In the case of the ***People's Railroad*** vs. ***Memphis Railroad***, 10 Wallace, 52, the Court said: "Such corporations are usually invested with the power to lay out, open, alter, repair, and amend streets within the corporate limits; but the rule is well settled that, by virtue of these powers, without more, they cannot grant to an association of persons the right to construct and maintain for a term of years a railway in one of the streets of a municipality, for the transportation of passengers for private gain, and that an ordinance or resolution of the authorities granting such a right is void. Special powers are given to such corporations to lay out, open, and repair streets as a trust to be held and exercised for the benefit of the public from time to time, as occasion may require, and the general rule is that these powers cannot be delegated to others, nor be effectually abridged by any act of the municipal corporation, without the express authority of the Legislature."

But, if we read plaintiff's argument correctly, he does not place the defendant's power to issue these bonds on the ground that they were issued for the construction of a "structure of public necessity and untility," but on the ground that the corporation had the power, under the statutes of the State, to issue the bonds "in aid of the Texas and Pacific Railroad." In other words, he puts together the general statute of the State, authorizing aid to railroads, under certain very stringent conditions, without the issue of bonds, and the section of the city charter authorizing the issue of bonds for certain purposes specifically enumerated, and from the two combined deduces the extraordinary power claimed in his petition. The peculiar line of the argument derives importance from the fact that it virtually abandons the proposition that the purpose of the issue was for a public building, and falls back on the supposed power to issue the bonds in aid of works of internal improvement. Let us examine the plaintiff's novel position.

We know of no power granted by the State laws to corporations, to aid works of internal improvement by the purchase of real estate, to be donated for a depot. The only aid known to the laws of Louisiana is aid by the *subscription of stock.*

We know of no power granted by the laws of the State to municipal corporations to aid foreign works of internal improvement at all. The only works which can be aided, are those undertaken "under the laws of the State," and then only on "complying with the provisions" of the statute.

The statutes of the State (R. S., Secs. 2455–9), provide as follows:

> "Sec. 2455. It shall be lawful for the police juries and municipal corporations of this State to *subscribe to the* STOCK of corporations undertaking works of internal improvement, *under the laws of this State*, on complying with the provisions hereinafter set forth.
>
> "Sec. 2456. All ordinances passed for such subscriptions shall contain the following provisions, to wit:
>
> "*First.* A statement of the number and amount of shares proposed to be subscribed.

"*Second.* The levy of a tax on the landed estate, situated in the parish or municipal corporation, sufficient to pay the amount of the subscription, and specify the rate of taxation and the time when it shall be payable.

"Sec. 2457. No ordinance shall be voted or take effect until it shall have been approved or ratified by a majority of the voters, on whose property the tax is proposed to be levied, at an election to be held specially for that purpose. The police jury or municipal corporation shall prescribe the manner of holding such election, and shall cause to be furnished to the commissioners a properly certified list of the authorized voters; and such election shall be preceded by a notice for thirty days, published in one or more newspapers of the parish or municipal corporation where it shall be held. If the ordinance be rejected by a majority of the voters, it shall be lawful at any subsequent period, at intervals of not less than six months, again to take the sense of the voters in the same manner as at the first election.

"Sec. 2458. The stock subscribed shall not belong to nor be administered by the parish or municipal corporations by which the subscription shall be made, *but shall belong to the tax payers,* who shall have paid therefor, and the tax receipt of each tax payer shall entitle him to a certificate, transferable by delivery from the corporation to which subscription has been made, for an amount equal to the amount of the tax paid."

The courts of Louisiana have been strict in requiring that all these formalities should be complied with in the subscription of stock. *State ex rel. W. S. Haven* vs. *The City of Shreveport*, 27 Ann., 623. The fact that but few of them were complied with in this instance, and that the aid granted was a donation and not a subscription of stock, goes to show that the Council was not proceeding under the laws of the State, but directly under the city charter; that it was not thinking of granting aid to a railroad, but of erecting a building "of public utility," as advised by the city attorney.

Not only had the City Council no power to grant aid to a railroad company except by a subscription of stock, but it could make no subscription except on complying with the formalities as above set forth. Moreover, the evidence shows that when this ordinance was passed it had not been read the number of times required by Sec. 20 of the city charter.

We are aware that there are certain irregularities in the exercise of a recognized power, which are cured by the action of the corporation, and which it is estopped from setting up under certain circumstances. But, on the other hand, there are certain powers which derive their vitality, and their very existence, from the mode of their exercise. Of such is the power to subscribe for stock in railroad companies under the laws of this State. The only power granted is that which is granted in a particular way. Judge Dillon says: "So in a case where the county had by a legislative act no authority to issue its bonds to the railroad company unless upon the sanction of a previous vote after thirty days' notice of the election to be held for that purpose, the Supreme Court of Illinois held, in a direct proceeding against the county to enjoin it from issuing its bonds, that although there was an election at which a majority were in favor of the subscription, yet the failure to give the thirty days' notice was a fatal defect and the issue of the bonds was restrained."

Municipal Corporations, Sec. 108.

The plaintiff dwells on the fact that the defendant, by issuing the bonds, has decided for itself the question of power so to do, and argues that it cannot now be heard to deny it. A number of authorities are cited, principally State and U. S. Circuit Court decisions, but few being decisions of the Supreme Court of the United States. In one case (16 Wallace, 159,) the court said, that such construction "is not without weight," and in another, (1 Wallace, 384,) the statute gave the council the right to decide the question. It would be a most extraordinary doctrine, that a corrupt or incompetent council should have the right to decide that it could exercise illegal powers, and that no one could be heard to dispute it, simply because the council had so decided it. The courts have held no such doctrine.

The plaintiff contends that the defendant has, by its subsequent action, ratified the issuance of the bonds, and thus cured the want of whatever power was necessary. A nullity cannot be ratified. If the power to issue these bonds was originally wanting, no subsequent ratification could give them any validity. In the case of *Supervisors* vs. *Schenck*, 5 Wallace, 781, one of the Supreme Court cases quoted by plaintiff to sustain his position, the court say: "ratification is inoperative if the party attempted to be charged was not competent to make the contract in question when the same was made."

In *Marsh* vs. *Fulton Co.*, 10 Wallace, 684, the court say: "a ratification is, in effect upon the act of the agent, equivalent to the possession by him of a previous authority. It operates upon the act ratified in the same manner as though the authority of the agent to do the act existed originally. It follows, that a ratification can only be made when the party ratifying possesses the power to perform the act ratified."

The power to issue these bonds being absolutely wanting, they are void into whosoever hands they may have come no matter how innocent a holder he may be, or how good the faith in which they may have been acquired. The bond having stated on its face the purpose for which and the city ordinance under which it was issued, such statement operated as a notice to all the world. If, with such facilites for discovering whether the power to issue them existed or not, within easy reach, parties took them without enquiry, they took them at their peril. They cannot now plead that they are innocent third holders without notice. "The act in pursuance of which the bonds were issued is a public statute of a State, and it is undoubtedly true that any person dealing in them is chargeable with a knowledge of it; and as this board was acting under delegated authority, he must show that the authority has been properly conferred."

Commissioners of Knox County vs. *Aspinwall*, 21 How., 543.

In *Marsh* vs. *Fulton County*, 10 Wall., 683, the Court said:

> "But it is earnestly contended that the plaintiff was an innocent purchaser of the bonds without notice of their invalidity. If such were the fact we do not perceive how it could affect the liability of the county of Fulton. This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instruments might for such reason be taken without special enquiry into their validity. It is a case where the power to contract never existed, where the instruments might, with equal authority, have been issued by any other citizen of the county. It is a case, too, where the holder was bound to look to the action of the officers of the county, and ascertain whether the law had been so far followed by them as to justify the issue of the bonds. The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder. This is the law even as respects commercial paper alleged to have been issued under a delegated authority and is stated in the case of *Floyd Acceptances*."

In this case though the bonds were negotiable in form, they were held void in the hands of innocent holders, for want of authority to issue them, having been voted to one corporation and delivered to another. Dillon says:

> "Yet aside from these differences, the courts all agree that such a corporation may successfully defend

> against the bonds in whosesoever hands they may be, if its officers or agents who assumed to issue them, had no power to do so. * * * This is the sound and true rule of law on this subject, and the one which has had the uniform approval of the State Courts in the country, and it has also received the high sanction of the Supreme Court of the United States."
>
> *Municipal Corporations*, Sec. 426.

Such is also the decision of the Supreme Court of Louisiana, in *Wilson* vs. *The City of Shreveport*, quoted above.

So far as the equity of this case is concerned, it is all on the side of the defendant. Bonds to the amount of $260,000 were issued without authority. On them the small sum of $67,000 was raised and donated to a foreign railroad company, for the purchase of a depot over which the city exercises no ownership or control. All but twenty of the bonds are still held against the corporation. It is just such financial mismanagement as this which brought the city into a condition which the Supreme Court of Louisiana has designated as "deplorable."

Much of the preceding argument was prepared for use in the court below, and in answer to the very able brief there filed by plaintiff.

In this court plaintiff argues "that the sole power of the city is to be sought in the charter set out in the record," and says: "We understand there is no general statute upon the subject."

Counsel are unacquainted with the provisions of sections 2455 to 2458 (inclusive) Revised Statutes of Louisiana, herein quoted in full. These sections constitute a general law, but the bonds were not issued in accordance with their provisions, and but few of their requirements were complied with.

Neither can the slightest authority for their issue be found in the 2d and 21st sections of the charter relied upon by plaintiff.

The first gives the right to purchase property necessary for municipal use, and the second vests in the city of Shreveport as rechartered, the title to all property real and personal, previously vested in the same city.

Unless the authority to issue bonds can be found in the 17th section of the charter, it does not exist at all Municipal corporations have no power to issue bonds except such as is given them by the Legislature, and such grants of power must be construed, not liberally, but *stricti juris*.

And even the Legislature cannot authorize the use of the taxing power for the aid of private enterprises or corporations, as has been thoroughly settled by this court.

Counsel for plaintiff relies on the case of *Edey* vs. *Shreveport*, 26th La. Annual, 636.

This was a suit for the recovery of the price of the identical property purchased for donation to the Railroad Company, and for the enforcement of the vendor's lien.

Certainly the vendors were entitled either to the price of their property or to recover it again.

The question of the authority to issue bonds did not arise in this case. The city may have contracted debts for the purchase of property upon which judgment could be obtained, and yet have had no power to issue bonds even for a portion of the purchase price.

In *Wilson* vs. *Shreveport* (a later case), reported in 29th La. Ann'l, 673, the Supreme Court denied the right of the city to purchase gas stock, and issue bonds therefor, and the court refers to the General Laws (hitherto quoted, and says "these laws were intended to impose a wholesome restriction upon the extravagance of municipal corporation.

In the case in 2d Robinson, La. Reports, page 244, quoted by plaintiff), the court found that the municipality had unlimited power from the Legislature to acquire property of any kind for any object, and to raise funds for payment by taxation, and it is needless to say that this case, and others which enforce contracts made under Legislative sanction to the fullest extent, ante date the Topeka case, 20 Wallace, 667, and the later case of the City of Parkersburg, in which this court have decided that there is a limit to the purposes for which even the Legislature can authorize the exercise of the taxing power by a municipal corporation.

If the city of Shreveport had no authority to issue these bonds, she is not bound by any subsequent ratification, such as the payment of interest or a part of the principal by her officers or agents.

20 Wallace, 667, 94 U. S., 266.

In the case of *The City of Parkersburg* vs. *Brown and others* (not yet reported), Mr. Justice Blatchford says:

> "There having been a total want of power to issue the bonds originally under any circumstances, and not a mere failure to comply with prescribed requirements or conditions, the case is not one for applying to the city under any state of facts, any doctrine of estoppel or ratification, by reason of its having paid some instalments of interest on the bonds, or by reason of any of the acts of its officers or agents in dealing with the property covered by the deed of trust. No such acts can give validity to the statute or to the bonds, however they may affect the status of the property dealt with or the relation of the city to such property."

This case can be reconciled with that of *Edy* vs. *Shreveport*, and sustains our comments upon that authority. In the Parkersburg case, the court says:

"But notwithstanding the invalidity of the bonds

> and of the trust, the O'Briens had a right to reclaim the property, and to call on the city to account for it, &c., &c."

So in *Edy* vs. *Shreveport*, the vendors could claim the property or the price notwithstanding the invalidity of the bonds, with which they had no concern.

In conclusion, we deny that the decisions of the Supreme Court of Louisiana, either before or since the issuance of these bonds, were in favor of the power of a municipal corporation to issue bonds without legislative authority. An examination of the cases will show that such authority was always held to be requisite.

We respectfully ask that the judgment of the circuit court may be affirmed.

B. F. JONAS.
For Defendant in Error.

108-282

OFFICE SUPREME COURT U.S.
FILED
MAR 27 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

NO. 230.

CHARLES EDWARD LEWIS,
Plaintiff in Error.
vs.
THE CITY OF SHREVEPORT,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

ARGUMENT IN REPLY FOR PLAINTIFF IN ERROR,
By JAMES GRANT & WHIT. M. GRANT.

Supreme Court of the United States.

NO. 230.

CHARLES EDWARD LEWIS,
Plaintiff in Error.
vs.
THE CITY OF SHREVEPORT,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

ARGUMENT IN REPLY FOR PLAINTIFF IN ERROR,

By JAMES GRANT & WHIT. M. GRANT.

Were it not that the Court might, from our silence, assume that we assented to the interpretation given our argument by the learned counsel for defendant in error, this reply would not be deemed necessary. Our argument is not assailed, nor our position weakened, by anything said, or authorities cited, by the learned counsel, and we are constrained to briefly explain our position because of the bare possibility of its admitting the interpretation given, although we are still unable to understand by what course of reasoning such results were arrived at. Our argument is this:

First. That Section 2 of the Charter gives to the city of Shreveport authority to purchase land within and without the city limits, and that this authority, as construed by the Supreme Court of Louisiana at the time of the passage of this Charter by the Legislature, the purchase and donation of the land, the creation of this debt, the issue and sale of these bonds, was ample and complete for all that was done by the city in relation thereto. That Section 21 recognized this power, and is, of itself, authority.

What are these Sections authority for? Directly, for the purchase of land outside of the limits of the city for any purpose within its discretion,—impliedly, for the issue of bonds to raise money with which to pay for it. And this position is so plain and so thoroughly and overwhelmingly sustained by the authorities cited in our argument in chief, pp. 10 to 18, that we are not surprised that the learned counsel has not attempted to answer it, but rather, assumed to treat it lightly as unimportant.

At the bottom of page 18 of defendant's argument he says: "Neither do Sections 2 and 21 give the slightest authority for the issue; the first gives the right to purchase property necessary for municipal use." Yet he fails to explain why, if such was the intention of the Legislature, some words of limitation were not used; what use it could have for, or disposition make, of lands *outside* its corporate limits. Nor does he show that the Supreme Court did not, of necessity, hold that the city had the power to buy this land, for this purpose and on credit, in *Eddy* vs. *Shreveport*; and in the same way construe similar provisions in *New Orleans* vs. *McDonough*. If it was not the intention of the Legislature that the city should have this power, why did it not incorporate into the Charter some words of limitation? It had notice of the interpretation to be given such provisions in *New Orleans* vs. *McDonough*, and if it had desired to change the law on that subject would have so modified the Charter. And the Supreme Court understood no change was desired by the Legislature when it decided *Eddy* vs. *Shreveport*, affirming the doctrine of *New Orleans* vs *McDonough*.

These two cases sustain every point upon which we cited them, and the explanation sought to be made of them on pp. 19 and 20 of defendant's argument is without the merit even of plausibility—contrary to the facts and the plain language of the Court. And equally without merit is the effort to discover an analogy between *Eddy* vs. *Shreveport*, and *Parkersburg* vs. *Brown*, recently decided in this Court, when there is no single fact common to the two cases. Nor is the *Loan Association* vs. *Topeka* authority upon any question before the Court in this case. Our argument in chief goes into these matters in detail, and our points and authorities fully explain themselves, and it is unnecessary to repeat them.

Second. That a railroad is a structure of public necessity and utility, as contemplated by Section 17 of the Charter, and the bonds reciting their issue in aid of the railroad recite a lawful purpose under the Charter, and the city is now estopped to deny its authority. (See argument in chief, pp. 20 to 24.)

Yet defendant in error says (second paragraph, p. 12, of his argument): "But, if we read plaintiff's argument correctly, he does not place the defendant's power to issue these bonds on the ground that they were issued for the construction of a structure of public necessity and utility, but on the ground that the corporation had the power, under the statutes of the State, to issue the bonds in aid of the Texas & Pacific Railroad. In other words, he puts together the general statute of the State, authorizing aid to railroads under certain very stringent conditions, without the issue of bonds, and the Section of the city Charter authorizing the issue of bonds for certain purposes specifically enumerated, and from the two combined deduces the extraordinary power claimed in his petition." He then adds that this line of argument derives importance from the fact that it abandons the proposition that the purpose of the issue was for a public building, and falls back on the supposed power to issue bonds in aid of works of internal improvement. It seems superfluous to add that the learned counsel did not *read our argument correctly*, if, indeed, judging from this anomalous statement, we can believe he read it at all. Our argument starts out with the statement on page 20 that we shall now endeavor to satisfy the Court that the Court below was mistaken in its interpretation of the Charter, irrespective of Sections 2 and 21; and the whole of that part of our argument is based on Section 17 of the Charter, —the one construed by the Court below. And in the second paragraph on page 10 we said: "As we understand, there is no general statute upon the subject, and that the sole power of the city is to be sought in the Charter set out in the record, page 14,"—so that all that part of the learned counsel's argument is taken up with an effort to overthrow a man of straw created by his own imagination. Following this effort, the learned counsel, on page 18, quotes our language as to the source of authority, and proceeds to advise us of the general statute, quoted by him above, upon which we placed no reliance.

Finally, on page 24, *et seq.*, we say that, even conceding the exercise of the power assumed to be doubtful, inasmuch as the city has placed its own interpretation upon its Charter, and exercised this power and issued the bonds, and ratified and approved its various acts in different ways, it is now estopped from setting up its want of authority, or the invalidity of its acts thereunder; and, if authorities are worth anything, such is the law. On pages 28 and 29 we distinguish this case from *Marsh* vs. *Fulton Co.*, and others, where this Court has said that a corporation can not, by saying it has authority, give it, and can not, by ratification and recognition, supply the want of authority. This distinction seems to be ignored and the argument of the learned counsel proceeds, in the last paragraph of page 15, *et seq.*, upon a proposition not advanced by us.

The defendant's suggestions on page 18 as to the equities of the case, come with a bad grace from it. There is no evidence that $260,000 of the bonds were put out against the city, nor that they are all, except $20,000, still out, nor that $67,000 was all that was realized upon them by it.

The record shows that $260,000 of bonds were issued; that Williamson, the agent of the city, was authorized to negotiate the note of the city, and to hypothecate said bonds as security for said note, and that $90,000 of the bonds were bought by plaintiff at 85 cents on the dollar, equal to $76,500. There is nothing to show for how much a note was given, how many of the bonds hypothecated, how much was realized by the city on said note, what was done with this $76,500, or what became of the rest of the bonds. Under these circumstances it seems to us quite out of place to complain about the equities now and here.

JAMES GRANT and
WHIT. M. GRANT,
Attorneys for Plaintiff in Error.